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1 (April 10, 2019)

2 P R O C E E D I N G S

3 (Open court:)

4 THE CLERK: Your Honor, this is the time set for
5 trial in Civil Case No. 15-1857-SI, Wakefield versus ViSalus,
6 Inc.

7 Could I have counsel in court, beginning with
8 plaintiff, please identify yourself for the record.

9 MR. FRANZINI: Simon Franzini from Dovel & Luner for
10 plaintiff.

11 MR. ADAMS: Good morning, Your Honor. Julien Adams
12 from Dovel.

13 MS. HOUGH: Good morning, Your Honor. Lily Hough for
14 the plaintiff.

15 MR. JACOBSON: Jonas Jacobson for the plaintiff,
16 Your Honor.

17 MR. DOVEL: Good morning, Your Honor. Greg Dovel for
18 the plaintiff. With us is our client, Ms. Lori Wakefield.

19 THE COURT: Welcome.
20 For defendant.

21 MR. O'NEAL: Good morning, Judge. John Maston O'Neal
22 on behalf of the defendant.

23 MR. FOSTER: Good morning, Your Honor. Zac Foster on
24 behalf of the defendant.

25 MR. PYLE: Good morning, Your Honor. Nicholas Pyle

1 on behalf of the defendant.

2 THE COURT: Welcome. Are we ready to bring in our
3 prospective jurors?

4 MR. O'NEAL: Yes, Your Honor.

5 MR. DOVEL: Yes, Your Honor. I wanted you to know
6 that we were able to get mobile phone information. We have
7 provided it to the defendants. We would like leave to add two
8 additional exhibits that indicate the mobile phones that were
9 used also and the accounts based on mobile phones.

10 THE COURT: All right. Let me see the exhibits.

11 MR. DOVEL: Your Honor, we handed you a paper copy of
12 Exhibit 36C. The other document, which will be Exhibit 64, is
13 an electronic document that we can display so Your Honor can
14 see what it looks like.

15 THE COURT: All right. Where do I see on 36C which
16 is the number of mobile phones? Oh, this is mobile phones
17 only. I see.

18 All right.

19 MR. DOVEL: Yes.

20 THE COURT: By the way, let me ask you, how does 36A
21 differ from 36B?

22 MR. DOVEL: 36B takes out any numbers that were -- we
23 went through a check and made sure that we had numbers that
24 were U.S. only and that were good phone numbers. That's what
25 36B did.

1 36C then -- I am trying to remember. Let me ask
2 Mr. Franzini. He knows the differences.

3 MR. FRANZINI: Good morning, Your Honor. 36B was the
4 one that addressed some of the new objections that Mr. O'Neal
5 raised in court the other day.

6 36C is a count of just the mobile numbers.

7 THE COURT: Let me try this again: 36A and B differ
8 by about 8,000 calls. What's the difference between 36A and
9 36B?

10 MR. DOVEL: Your Honor, I believe that 36B, if I've
11 got these right in my head, is one where we took out business
12 numbers. In other words, we did a separate count of numbers
13 associated with businesses. Then we went from 36A to B. We
14 took out the ones that were to numbers that were non-U.S.
15 numbers or were bad numbers. In addition --

16 THE COURT: That doesn't make sense because if you
17 look at 36A, 36A-2 says "calls to numbers associated with a
18 business, 1,816." If you take a look at 36B-2, "calls to
19 numbers associated with a business, 1,790." So both separate
20 out calls associated with business, but there is still a
21 difference of about 26 calls.

22 MR. DOVEL: Yes, Your Honor. Between A and B, what
23 we did was we took out the calls that were not to U.S. numbers,
24 and so that reduced it from A to B.

25 THE COURT: That's all I was asking. What's the

1 difference between A and B?

2 MR. DOVEL: I'm sorry. I thought it was between the
3 original and A.

4 THE COURT: No, between A and B.

5 All right. Who will be the witness you will be
6 presenting on 36C?

7 MR. DOVEL: Shawn Davis.

8 THE COURT: Any objection to 36C that is different
9 from the objection to 36A and B?

10 MR. FOSTER: Yes, Your Honor. We received 36C at
11 10:30 last night, the day before trial. As we were previewing
12 it for, Your Honor, I personally have spent weeks attempting to
13 sort out through the 4 million lines of underlying data what 36
14 means. I thought I had mapped out a pretty good cross. Come
15 Monday, we get 36A. I have no idea what the underlying data is
16 here. I have no idea how to sort out what these 8,000 calls
17 are associated with business. That's not even an objective
18 criteria. That's not a summary. That's an argument.

19 So we come into court; we raise that issue. Tuesday
20 morning, I get 36B. There are still changes to that. I'm not
21 even sure what it is. And last night, after we had tucked in
22 to go to bed to prepare for a \$6 billion trial, I get 36C,
23 which an additional document -- we get additional underlying
24 data with some expert report about what's a cell phone and
25 what's not.

1 I haven't even had a chance to look at it,
2 Your Honor, but it is 850,000 lines of data. If that's not
3 prejudice, I don't know what is. I have no idea how I would
4 even cross Mr. Davis on this -- on a document that I've never
5 seen before.

6 THE COURT: So when did you get the underlying data
7 for 36C?

8 MR. FOSTER: Last night at 10:30 -- what they are
9 going to put into evidence is 64, which I understand to be some
10 expert report about what's a landline and what's a cell phone.
11 We did not get that until last night at 10:30 p.m. And I'm not
12 even sure what the underlying data is for that summary because
13 the only underlying data I have is for 36. In terms of this is
14 a compilation of all the spreadsheets -- yada, yada, yada -- it
15 adds up to 4.1 million. Now I have got a spreadsheet that adds
16 up to less than 4.1 million. Apparently they've run new
17 spreadsheets. I don't have the software they've used. I don't
18 have the underlying data. I don't know how I could possibly
19 deal with that summary at trial, Your Honor.

20 THE COURT: All right. We will hear from Mr. Davis
21 out of the presence of the jury, and I will let you make your
22 inquiries of Mr. Davis. We will hear when he had the data,
23 when he disclosed the data to you, and then I'll keep this
24 issue under advisement until then.

25 MR. FOSTER: Just for clarification, Your Honor,

1 which summary? Are they withdrawing the other summaries? Am I
2 dealing with four summaries at once?

3 THE COURT: I don't know. We will find out when we
4 hear from Mr. Davis.

5 MR. FOSTER: Again, Your Honor, I reserve my
6 objection.

7 THE COURT: And I'm not sustaining or overruling your
8 objection. I am taking it under advisement until we hear from
9 Mr. Davis.

10 MR. FOSTER: Very well, Your Honor.

11 THE COURT: I will hear further argument from both
12 sides. Let's bring in the prospective jurors.

13 (Pause in proceedings.)

14 (Prospective jurors entered the courtroom.)

15 THE COURT: Counsel, you may be seated.

16 I would like to welcome all of the prospective jurors
17 to the courtroom. I am United States District Judge
18 Michael Simon. You have already met our courtroom deputy,
19 Mary Austad. She will be administering the oath to all of the
20 witnesses, assisting with the handling of all of the trial
21 exhibits, and being generally responsible for the jurors
22 throughout the trial.

23 To my left, your right, is our court reporter,
24 Mr. Dennis Apodaca.

25 To my right, your left, is my law clerk,

Jury Selection

1 Anna Deffelbach, who will be assisting me during this trial.

2 We will soon be filling the jury box with 16
3 people -- well, let's fill it in with 14 people. Before I do
4 that, though, I'm going to ask the clerk of the court to
5 administer an initial oath to all of the prospective jurors.
6 So for all of you who have been summoned here for jury duty
7 today, please stand and raise your right hand, and when Mary
8 completes the oath, please say "I do" or "I will."

9 (The jury was duly sworn.)

10 THE CLERK: Thank you. Please be seated.

11 THE COURT: I'll now give all of our prospective
12 jurors some basic information about this case. I will have
13 further explanations and instructions after the jury is
14 selected. I will also be giving each juror his or her own set
15 of written jury instructions at the end of the trial. But for
16 right now, please do not form any opinions or impressions about
17 this case at this time from the little bit of information that
18 I'm going to tell you now. If you are selected for this jury,
19 it is important that you keep an open mind about everything,
20 until all of the facts and the details have been presented at
21 trial.

22 This is a civil lawsuit. It is not a criminal case.
23 In a civil trial the plaintiff ultimately seeks money damages
24 against the defendant. This lawsuit is brought under a federal
25 statute known as the Telephone Consumer Protection Act, which

Jury Selection

1 is often referred to as the TCPA. The TCPA is a federal law
2 that, among other things, makes it unlawful for any person or
3 entity to make a telemarketing call to a mobile or cellular --
4 by the way, I will be using "mobile" and "cellular"
5 interchangeably -- to a mobile or cellular telephone or to a
6 residential telephone line or a residential landline; that is,
7 the line connected inside the house but a residential
8 landline -- when that call uses an artificial voice or a
9 prerecorded voice to deliver or play a message, unless the
10 person or entity making the call has the prior express consent
11 of the party being called.

12 Now, this civil lawsuit includes both an individual
13 claim and a class action claim. The named plaintiff is
14 Ms. Lori Wakefield, who you will hear from in a few moments.
15 In one claim Ms. Wakefield asserts one individual claim on
16 behalf of herself -- that's Count 1 -- and a separate claim on
17 behalf of a class of similarly situated individuals, and that's
18 Count 2.

19 Now, the defendant in this lawsuit is a company
20 called ViSalus, Inc., or Incorporated. The defendant, ViSalus,
21 is a multilevel marketing company that sells weight loss
22 products and dietary supplements.

23 The plaintiff, Ms. Wakefield, alleges that ViSalus,
24 the defendant, violated the TCPA by making one or more
25 telemarketing calls to mobile or cellular telephones or to

Jury Selection

1 residential telephone lines or residential landlines of class
2 members and that in making these calls, ViSalus used an
3 artificial or prerecorded voice to play messages without having
4 the prior express consent of the party being called.

5 Now, a class action is a procedure that allows the
6 filing of one lawsuit by a representative or a small number of
7 representatives -- here we have one representative -- on behalf
8 of a group of plaintiffs who have similar claims. This
9 procedure is intended to avoid duplication of effort or expense
10 from multiple lawsuits asserting the same claim by many people
11 in different locations.

12 Ms. Wakefield is the representative of the class in
13 this case, and the plaintiff class is comprised of all
14 individuals in the United States who received a telephone call
15 made by or on behalf of ViSalus promoting ViSalus's products or
16 services, where such call featured an artificial or prerecorded
17 voice and where neither ViSalus nor its agents had any current
18 record of prior express written consent to place such call at
19 the time such call was made. Defendant ViSalus denies that it
20 has violated the Telephone Protection Consumer Act, or the
21 TCPA.

22 I would now like to introduce some of the lawyers and
23 the parties to the lawsuit.

24 I will start with the plaintiff, Ms. Wakefield, both
25 as the individual claimant and as a representative of the

Jury Selection

1 plaintiff class.

2 Mr. Dovel, will you be doing this?

3 MR. DOVEL: Yes, Your Honor.

4 THE COURT: I'll now ask one of the lawyers
5 representing the plaintiff and the plaintiff class to introduce
6 himself, his co-counsel, his client, anyone else who may be
7 assisting him in the courtroom during trial, and also all of
8 the names of the lawyers and law firms of any of the attorneys
9 who represent the plaintiff and the plaintiff class, because in
10 a few moments I'm going to ask the prospective jurors, Do you
11 know any of them?"

12 Mr. Dovel.

13 MR. DOVEL: Thank you, Your Honor. My name is
14 Greg Dovel, and I'm with the law firm of Dovel & Luner. Our
15 client -- I will have her stand up -- is Lori Wakefield.

16 With me today, who will be assisting us, is my
17 colleague, Jonas Jacobson; my colleague, Simon Franzini, and my
18 colleague, Julien Adams. In addition, from the Edelson law
19 firm, is Ms. Lily Hough.

20 Additional lawyers who are associated with the case
21 include also from the Edelson firm Rafey Balabanian,
22 Eve-Lynn Rapp, Andrew Lawson, and Stewart Pollock. And from
23 the Forum Law Group, Scott Kocher and Stephen Voorhees. I
24 believe that's it, Your Honor

25 THE COURT: Is Benjamin Richman no longer with the

Jury Selection

1 Edelson law group? He was listed on this case list.

2 MR. DOVEL: I neglected him. He should be identified
3 also.

4 THE COURT: You mentioned Stefan Coleman? The Law
5 Offices of Stefan Coleman?

6 MR. DOVEL: I did not mention him.

7 THE COURT: He is still on the court records.

8 MR. DOVEL: Yes.

9 THE COURT: Let me ask the prospective jurors: Do
10 you think you know any of those people, the names that have
11 just been read, either the individuals or people at those law
12 firms? By a show of hands, does anybody think you may know or
13 may be related to or have any interactions with any of those
14 folks? And I see no hands.

15 Okay. Next, I'm going to turn to the defendant,
16 ViSalus, Incorporated. One of the lawyers, Mr. O'Neal or
17 Mr. Foster --

18 MR. O'NEAL: It will be me, Judge. Thank you.

19 THE COURT: All right.

20 Mr. O'Neal, will you please introduce yourself, your
21 co-counsel, any client representatives who either will be here
22 now or coming into trial, anyone who may be assisting you in
23 the courtroom during trial, and the names of all the lawyers
24 and law firms who represent the defendant in this case.

25 MR. O'NEAL: Sure. Thank you, Judge. Good morning,

Jury Selection

1 everyone. My name is John O'Neal. I'm with the firm of
2 Quarles & Brady. My client representative is here today. His
3 name is Josh Berger. He is in-house counsel for ViSalus.

4 Also, with me today is my colleague, Zac Foster, and
5 we will be helped along during the trial with the Miller Nash
6 firm. This is Nick Pyle. His partner, Mr. Joshua Sasaki, may
7 show up.

8 Your Honor, I believe that's it.

9 THE COURT: Thank you, Mr. O'Neal.

10 So prospective jurors, does anybody think you know
11 any of those individuals, any of those people, related to any
12 of them, know any of the lawyers at the law firms that you've
13 heard identified? Anybody, by a show of hands, think you may
14 know any of those folks?

15 All right. By the way, by a show of hands, has
16 anybody here today heard of ViSalus before today? I see no
17 hands. So no one has had any relationships with ViSalus?
18 V-I-S-A-L-U-S?

19 Okay. And the person who just came in, may I ask,
20 were you summoned here as a juror?

21 UNIDENTIFIED SPEAKER: No.

22 THE COURT: Okay. Very good.

23 The public is always welcome in our courtrooms.

24 All right. Our system of trial by jury is one of the
25 best ways ever devised by the human mind to fairly and

Jury Selection

1 impartially to resolve disputes. It has also been an important
2 part of our country's heritage since even before the founding
3 of our nation. When the first English settlement was founded
4 and begun in Jamestown, Virginia, in 1607, its charter
5 guaranteed the settlers the right to trial by jury.

6 If you look at our Declaration of Independence,
7 signed on July 4th, 1776, and mostly written by Thomas
8 Jefferson, you will see that one of the reasons given to the
9 world for why our 13 colonies were declaring their independence
10 from Great Britain and willing to engage in the
11 Revolutionary War was because King George III had on many
12 occasions -- and it says it right in the Declaration of
13 Independence -- "deprived the colonists of the benefits of
14 trial by jury."

15 In addition, the right to have a trial by jury is so
16 important that the framers of our Constitution put it right
17 into the text of the Constitution itself without even waiting
18 for the Bill of Rights. And the right to trial by jury is the
19 only right that appears both in the text of the Constitution
20 and in the Bill of Rights, and it's in three separate
21 amendments to the Bill of Rights.

22 We are Americans because of our shared ideals, not
23 because of ethnicity, religion, or culture. And the
24 United States Constitution is our most important national
25 document. It reflects our shared ideals as a nation, including

Jury Selection

1 civic participation, deliberation, fairness, equality, liberty,
2 accountability, freedom of conscience, the common good, and the
3 rule of law.

4 Our country does not ask very much of its citizens,
5 and jury service is one of the most important things that we do
6 ask of a civilian. It is also one of the few opportunities
7 that a citizen has to participate in the American system of
8 self-government. Bringing citizens together so they can
9 resolve disputes within our society under the rule of law is an
10 important part of self-government.

11 You know, there's disputes everywhere, but in other
12 countries it is usually a government officer or administrator
13 or official of some sort that resolves disputes. That's not
14 what self-government is about. In our system of
15 self-government, the jury, the people coming together, resolve
16 the disputes in our community.

17 Service on a jury is not only a civic responsibility
18 of all citizens, it really is also a very interesting learning
19 opportunity and experience. If you are selected to be a juror
20 in this courtroom, you will have either a front row seat or, at
21 worst, a second row seat to watch and participate in the
22 American system of justice for everyone under the law.

23 When the jurors begin their deliberations at the end
24 of the trial, the opinions and perspectives of each juror will
25 be taken seriously and respected by your peers on the jury.

Jury Selection

1 You will participate in a respectful discussion of various
2 points of view, and the final decision, which will be
3 unanimous, will reflect no individual's will but the collective
4 wisdom of the jury acting together.

5 We are now going to call the names of 14 people who
6 have been selected at random to be the first prospective jurors
7 to be interviewed. You've been selected to receive a summons
8 to come here from basically voter rolls and driver's license
9 rolls. Your names are selected at random. Then the Clerk's
10 Office has further randomized those names and now put them in
11 order selected at random. We will call the first 14, and we
12 will be asking them some questions.

13 Mary, I've changed my mind. Let's call 16. I think
14 it will be more efficient to call 16 up; so eight and eight.
15 We are going to call 16 folks up. It is reasonably likely that
16 some of these 16 folks may need to be excused from the trial,
17 and we'll then be calling up more people -- again at random --
18 to fill the seats in the jury box.

19 So, Mary, will you please call the first 16 names on
20 the list. We will start with seat No. 1, which is closest to
21 me in the front row, through seat No. 8 in the front row. Then
22 seat No. 9 will be filled closest to me in the back row.

23 THE CLERK: Rebecca Cornett.

24 THE COURT: Please come and sit in the specific sit
25 that Mary shows you.

Jury Selection

1 THE CLERK: Kyle Hauger. H-A-U-G-E-R.

2 Marcelene Foltz. F-O-L-T-Z.

3 Tracie Wallace. W-A-L-L-A-C-E.

4 Robert Koski. K-O-S-K-I.

5 Tiffany Linborg. L-I-N-B-O-R-G.

6 Jairo Rodriguez. R-O-D-R-I-G-U-E-Z.

7 Rebekah Shidner. S-H-I-D-N-E-R.

8 Shelley Langton. L-A-N-G-T-O-N.

9 Jerimiah Matlock. M-A-T-L-O-C-K.

10 Jeffrey Jaren. J-A-R-E-N.

11 Ben Douglas. D-O-U-G-L-A-S.

12 Gary Knowles. K-N-O-W-L-E-S.

13 Bridget Heberling. H-E-B-E-R-L-I-N-G.

14 Robert Thompson. T-H-O-M-P-S-O-N.

15 And Cody Noffsinger. N-O-F-F-S-I-N-G-E-R.

16 THE COURT: This is the process of jury selection
17 that is called voir dire. It is a phrase that's loosely
18 translated as "to speak the truth."

19 The attorneys and I will soon be asking the 16 of you
20 questions concerning your qualifications to sit as jurors in
21 this particular case, and let me remind you that just a few
22 minutes ago you took an oath to answer these questions
23 truthfully. There are no right answers to these questions, and
24 there are no wrong answers. All that is required of you is to
25 be accurate and tell the truth.

Jury Selection

1 The purpose of these questions is not to pry into
2 your personal affairs. It is not to embarrass anyone. We only
3 want to determine whether someone is a suitable juror for this
4 particular case, and these questions will help determine
5 whether any prospective juror should be excused for what the
6 law calls cause.

7 In addition, as part of the trial process, each side
8 is allowed to excuse a certain number of prospective jurors
9 without having to give any reason at all. That is known as a
10 peremptory challenge. No one should feel insulted if they are
11 excused from serving on the jury in this case, and this is all
12 part of the process to ensure that we have not only a trial
13 that is fair in fact, but a trial where all sides believe the
14 process is fair. We want a trial that is fair in both
15 appearance and in reality.

16 As I said, we don't want to embarrass anyone, and so
17 if you feel a question is too personal, and you would like to
18 discuss that answer with me and the lawyers privately, just let
19 me know. But I would like to keep that to a minimum so that we
20 can complete this part of the trial process in an efficient
21 manner. But as I said, if you want to speak privately about
22 something, just let me know, and we can do that.

23 I'm going to be asking the first group of 16
24 potential jurors certain questions. After you hear a question,
25 if you have a response, just raise your hand. Mary will then

Jury Selection

1 take a microphone to you. Please wait until you have the
2 microphone before you begin speaking; that way everyone in the
3 courtroom can hear you.

4 In addition, we have a court reporter here who is
5 taking down everything that is said in this courtroom. So
6 please begin all of your responses by stating your name at the
7 beginning of every answer. By the time you've given your
8 fourth or fifth response, you may think that we all know your
9 name, and we all very well probably do, or we might. But just
10 so we have an accurate record, please give your name at the
11 beginning of every response. If you forget, I'll remind you.

12 For those of you who have not yet been called up to
13 the 16 in the jury box, you are still a potential juror.
14 Please listen carefully to these questions. Some of you may be
15 called up later to replace some of the people in this first
16 group. So if you are called up later, I will ask you at that
17 time if you would have raised your hand in response to any of
18 these questions. So please keep that in mind. Also, if need
19 be, I'll remind you what the questions were.

20 All right. So I've already asked about the lawyers
21 and the law firms. Let me just double-check: Does anyone here
22 think they know the plaintiff, Ms. Lori Wakefield?

23 Ms. Wakefield, raise your hand.

24 Does anyone think they know her in any way? I see no
25 hands.

Jury Selection

1 I've already asked if you know any of the lawyers or
2 anyone working with them. I've already asked if anyone knows
3 ViSalus.

4 Any memories now? Answer still the same? Know any
5 of the lawyers, their law firms, or ViSalus? No hands.

6 I've also asked does anyone know anyone that has
7 anything to do with ViSalus. Do you know anybody who has
8 worked there or ever worked there? Anything to do with it, to
9 the best of your knowledge, either as a customer, promoter,
10 investor?

11 Anybody have that knowledge at all?

12 Okay. Now, is anyone here a member of the class?
13 I'll read the class definition again. It is all individuals in
14 the United States -- that's you all -- who received a telephone
15 call made by or on behalf of ViSalus promoting ViSalus's
16 products or services, where such call featured an artificial or
17 prerecorded voice where neither ViSalus or its agents had any
18 current record of prior express written consent to place such a
19 call at the time the call was made.

20 I get that we've all have gotten calls like this in
21 the past. We will talk more about that in a few minutes. But
22 does anybody recall getting such a call from a company called
23 ViSalus or talking about a ViSalus product?

24 Anybody? All right. I see no hands.

25 Has anybody heard about this lawsuit from any source

Jury Selection

1 before today?

2 Now, besides Ms. Wakefield, some of the following
3 people may give testimony in this case as a witness, either
4 live, by sitting here in the witness stand, or by having read
5 to you previously taken deposition testimony. I'll explain
6 what a deposition is a little bit later.

7 But these will be the witnesses who may testify in
8 this trial. Right now I just want to know do you know any of
9 them -- any neighbors, family members, anyone you may have
10 encountered or worked with.

11 Do any of these names sound familiar? And if you
12 think they might be familiar, some of them are not from
13 Portland. I'll tell you where they are from if you think you
14 may have known some of these names.

15 Mr. Shawn Davis.

16 Mr. Lance Eves. E-V-E-S.

17 Mr. Justin Call.

18 Mr. Scott Gidley.

19 Mr. John Laun. L-A-U-N.

20 Mr. Blake Mallen. M-A-L-L-E-N.

21 Do any of these names sound familiar to you?

22 All right. I see no hands.

23 Now, this trial is scheduled to last possibly through
24 Monday. Today is Wednesday. We are going to go for about half
25 a day today. We will select the jury. I will give the actual

Jury Selection

1 preliminary instructions, and then you will have the second
2 half of the day off. We will start again tomorrow at 9:00. We
3 will go tomorrow from 9:00 to 5:00. If need be, on Friday we
4 will go Friday 9:00 to 5:00. We may have the case in your
5 hands by Friday, but it is possible that it won't be in your
6 hands until Monday.

7 I realize that being a juror is somewhat
8 inconvenient, but as I said, it's our duty as citizens.

9 Is there anyone here, any of you 16, who feels it
10 would be a serious hardship to sit on the jury for this period
11 of time -- let's assume through Monday -- either because of
12 certain commitments that you've already made or other factors
13 that make it truly impossible or seriously impractical for you
14 to serve as a juror in this case?

15 Anyone at all, by show of hands?

16 Let's get a microphone to you. We will go down the
17 first row and then to the second row.

18 State your name first.

19 JUROR: Marcelene Foltz.

20 THE COURT: Ms. Foltz, what's your situation?

21 JUROR: I just have like pain behind my eye, and I
22 have like migraines. I've had one all week, and so that may
23 not be able to let me focus on everything.

24 THE COURT: I understand. Have you served as a juror
25 before in any other cases?

Jury Selection

1 JUROR: Not here, no.

2 THE COURT: Somewhere else?

3 JUROR: Years ago, yes.

4 THE COURT: What state?

5 JUROR: In Oregon.

6 THE COURT: Very good. I'm sorry about your pain.

7 I'll get back to you in a moment, Ms. Foltz.

8 Anyone else?

9 JUROR: Jairo Rodriguez. J-A-I-R-O. I am a
10 full-time student who is missing class today, and I have an
11 internship interview tomorrow, and then I have a full schedule
12 on Monday.

13 THE COURT: Thank you, Mr. Rodriguez. I will get
14 back to you in a moment.

15 Anyone else in the back row?

16 JUROR: I am Robert Thompson. I'm a self-employed
17 woodworker, and I have a couple of projects in the works and an
18 installation coming up on Monday for some cabinetry.

19 THE COURT: Do you work with others?

20 JUROR: No.

21 THE COURT: By yourself?

22 JUROR: Sole proprietor.

23 THE COURT: Have you served on a jury before?

24 JUROR: I have been called but not selected.

25 THE COURT: Understood.

Jury Selection

1 All right. Anyone else in the 16?

2 All right. First row, I'll excuse Ms. Foltz.

3 Thank you very much for coming. You are excused. I do hope
4 that your eye feels better soon.

5 JUROR: Thank you.

6 THE COURT: Let me excuse Mr. Rodriguez. When is
7 your first class today?

8 JUROR: At 9:00 a.m.

9 THE COURT: Sorry about that, but thank you for
10 coming here. I will excuse Mr. Rodriguez.

11 Mr. Thompson, thank you for coming today and for your
12 previous service. You may be excused.

13 Here is what we are going to do: Let me ask
14 Mr. Noffsinger to come in and take seat 3.

15 Then let me ask, please, Ms. Amanda Stanley to come
16 and sit in that second seat in. Ms. Stanley is the next
17 person -- oh, it would be seat No. 7. I'm sorry. Amanda
18 Stanley is sitting in seat 7.

19 Thank you.

20 Mr. Curtis Altman will be in seat No. 15.

21 Then, Mary, Mr. Jeffrey Neuls is next.

22 Mr. Neuls, will you please come and sit in seat
23 No. 16.

24 All right. Now, let me just confirm with
25 Ms. Stanley, Mr. Altman, and Mr. Neuls, do any of you know any

Jury Selection

1 of the names that I've mentioned? The company, ViSalus? Any
2 of the witness names? If you want me to read them again, I
3 will be glad to. Any of the lawyers?

4 By a show of hands, do any of you know any of those
5 names or think you might or want me to read them again?

6 Okay. I see no hands.

7 All right. If this case does go all the way to
8 Monday, will the three of you be able to serve on the jury if
9 you are selected for this case?

10 Ms. Stanley?

11 JUROR: Yes.

12 THE COURT: Mr. Altman, will you be able to serve on
13 this jury if you are selected through Monday?

14 JUROR: Yes.

15 THE COURT: Mr. Neuls?

16 JUROR: Yeah, I probably could make it.

17 THE COURT: Okay. You say "probably." Is there
18 something going on in your life?

19 JUROR: There is a big project at work.

20 THE COURT: Well, I'm going to give you the option,
21 because you may get selected. Do you want to tell me about it
22 and have me consider whether or not to excuse you, or do you
23 want to see if you're selected, and then you are going to be
24 with us for Monday?

25 What's your choice.

Jury Selection

1 JUROR: Yeah. The project is a big semiconductor
2 development job. There are a lot of experiments running, and I
3 need to be there.

4 THE COURT: Have you served on a jury before?

5 JUROR: I have.

6 THE COURT: Would you like to be excused from this
7 one?

8 JUROR: I would love to.

9 THE COURT: All right. You are missing an
10 interesting trial, but all right. You may be excused,
11 Mr. Neuls.

12 By the way, don't read anything into that. I think
13 all trials are interesting, but that's what I do for a living.

14 All right. Let's have Carol Sellards take seat
15 No. 16.

16 Is Ms. Sellards here? Thank you.

17 Good morning.

18 JUROR: Good morning.

19 THE COURT: Do you know the names I've mentioned,
20 either the lawyers? The parties? The business, ViSalus? Or
21 the witness names? I will read them again if you want me to.

22 JUROR: No.

23 THE COURT: If you are selected to be a juror in this
24 case, can you serve with us through Monday?

25 JUROR: My biggest concern is I don't have a lot of

Jury Selection

1 stamina. There are many days that test of my physical
2 strength.

3 THE COURT: I don't want to pry, but is that because
4 of medical issues? And I won't get into the details.

5 JUROR: I'm not strong. I'm too old.

6 THE COURT: You don't look it, but okay. Let me ask
7 you, have you served on a jury before?

8 JUROR: 30-some years ago.

9 THE COURT: Now, the way it will work here, and I
10 will tell this to everyone, today will be a half day. When we
11 start tomorrow at 9:00, we will take a mid-morning break for
12 about 15 to 20 minutes. Then we will take a lunch break for
13 about an hour, an hour and a quarter, and then we will take a
14 mid-afternoon recess for about 15 to 20 minutes and end by
15 5:00. That will also be our schedule on Friday, if need be;
16 and on Monday, if need be. Obviously if any juror needs a
17 recess other than during those times, just raise your hand and
18 say, "I need a break," and I'll give you a break.

19 Does that sound like it might be too taxing for you?

20 JUROR: I never know from day to day. Some days are
21 good and some days are not so good.

22 THE COURT: Well, if you are not feeling well, what's
23 likely to happen?

24 JUROR: I get really exhausted.

25 THE COURT: I think probably the safest thing to do

Jury Selection

1 is excuse you, because if you need a break, that may very well
2 interfere with the rest of the trial continuing.

3 Thank you for coming, Ms. Sellards. You may be
4 excused.

5 JUROR: Thank you.

6 THE COURT: David Sedell, are you here?

7 Mr. Sedell, will you please take seat No. 16.

8 Mr. Sedell, do you know any of the names that I've
9 mentioned? The business? The individuals? The witnesses? I
10 am glad to repeat any of them. Do you know any of those names?

11 JUROR: I do not.

12 THE COURT: And if you are selected to be a juror,
13 and the case goes through Monday -- and it might not. It might
14 be over Friday. Will you be able to be with us?

15 JUROR: Yes, sir.

16 THE COURT: All right. Let me continue.

17 Does anyone here have any physical impairments that
18 might cause you to have a problem with jury service? If you
19 have any hearing or vision issues, by the way, we can assist.
20 We can accommodate. But we need to know that.

21 But does anyone have any difficulty reading English,
22 understanding spoken English, or possibly needing any
23 accommodations of any sort? If so, just raise your hand, and
24 we will talk about it. I see no hands.

25 Now, it's my job as the judge to instruct the jury on

Jury Selection

1 what the law is. In our legal system the jurors must follow
2 the law as the judge instructs them, even if they don't agree
3 with the law or like the law. It is the jury's job to decide
4 the facts, but it is the judge's job to instruct the jury on
5 the law that applies to the facts of the case.

6 Now, is there anyone here who feels they cannot make
7 the commitment to me, and, frankly, to our legal system, to
8 follow the law as I instruct you? Anyone at all? I see no
9 hands.

10 All right. Now I expect to see lots of hands. How
11 many of you have the ability to get on the Internet and look up
12 something? I think I see everyone's hands.

13 Okay. It is critically important for the fairness of
14 the trial process that the jury make their decision only on the
15 basis of the facts received in evidence as they are presented
16 in trial and on the law that the judge instructs. That means
17 that you will have to make a commitment to me and to our legal
18 system that if you are selected to be a juror in this case, you
19 will not look anything up that has anything to do with this
20 case while you are a juror and until your jury duty is
21 discharged.

22 That means you won't be looking up any of the names
23 of the people, the names of the parties, the names of the
24 lawyers, any of the issues. You won't look up the law and read
25 about the law. You won't read about anything or look up

Jury Selection

1 anything factually or legally or do any research on your own
2 until the trial is over.

3 By the way, you may have some questions as the trial
4 proceeds, and I'll give you all notebooks and pens or pencils.
5 If you have a question, by all means, jot it down. Pass it to
6 Mary. I will look at it. I'll discuss it with the lawyers.
7 If it's appropriate, we will get your questions answered. If
8 it is not appropriate or if no one knows the answer, I will
9 tell you why you're not getting an answer.

10 What you can't do is look something up on your own.
11 That jeopardizes the fairness of the process, because I think
12 as we all know, sometimes the Internet gets it right; sometimes
13 they get it wrong. It's really hard to tell whether they get
14 it right or get it wrong. And with a trial process, when you
15 hear something from a witness, when you see a document, both
16 sides have the opportunity to question that witness, or at the
17 end, in closing arguments, to make their arguments to you about
18 what this document does or doesn't mean. Both sides will have
19 the opportunity to comment and argue about the same evidence
20 that you will all see and on which you will base your decision.

21 But if you do independent research, we won't know
22 that you have done it, and that will jeopardize the fairness of
23 this process because the parties will not be able to test that
24 evidence. The jury trial process is one of the great engines
25 of testing evidence. It is presented to you. The parties have

Jury Selection

1 a fair opportunity to test it, and then you make the decisions,
2 but only if you all base it on the same information.

3 Is there anyone here who feels they will not be able
4 to make a commitment to me to refrain from looking anything up
5 on the Internet or physically or even in a dictionary while you
6 are a juror? By the way, when you are done with your jury
7 service, you can look up anything you want. But while you are
8 a juror, you can't do any research on your own, factual or
9 legal.

10 Is there anyone here who feels they can't make that
11 commitment to me? I see no hands, and I thank you.

12 As I mentioned, this is a civil trial. It is not a
13 criminal trial. In a civil trial the plaintiff contends that
14 she is entitled ultimately to money damages against the
15 defendant. Have any of you all, you 16, ever served on a jury
16 before in either a civil case or a criminal case or in a
17 special kind of jury that's called a grand jury? Have any of
18 you ever served?

19 Let's get a microphone to you. Let's start with your
20 name.

21 JUROR: Rebecca Cornett. It was 40 years ago. I was
22 18 when I got called.

23 THE COURT: Wonderful. What type of case? Was it
24 civil? Criminal?

25 JUROR: Criminal.

Jury Selection

1 THE COURT: Did the jury reach a decision, if you
2 remember?

3 JUROR: On some of the counts we did.

4 THE COURT: Who is the next? Your name first.

5 JUROR: Kyle Hauger. I served on a criminal case in
6 Multnomah County probably eight years ago.

7 THE COURT: Did the jury reach a decision?

8 JUROR: Yeah.

9 THE COURT: Thank you.

10 JUROR: Tracie Wallace. I served maybe eight to ten
11 years ago on a civil case, and we didn't reach a verdict
12 because it was thrown out.

13 THE COURT: Okay. Anyone else in the front row? No.
14 Let's go to the back row. State your name first,
15 please.

16 JUROR: Curtis Altman.

17 THE COURT: How long ago?

18 JUROR: In the late '80s, mid '80s.

19 THE COURT: Do you remember whether it was civil or
20 criminal case?

21 JUROR: Civil.

22 THE COURT: Do you remember whether it reached a
23 decision?

24 JUROR: It did.

25 THE COURT: There was another hand.

Jury Selection

1 JUROR: Gary Knowles. It was a criminal case, and we
2 did reach a decision. It was in the mid '80s also.

3 THE COURT: Thank you.

4 For those of you who have been on a jury before --
5 civil or criminal -- were any of you selected to be what's
6 called the presiding juror or the jury foreperson or the
7 foreman or the forewoman? Any of you?

8 JUROR: Gary Knowles. I was.

9 THE COURT: I'll start with you. How was that
10 experience? How was your experience on jury service? Good?
11 Bad? Indifferent?

12 JUROR: Somewhere between good and indifferent.

13 THE COURT: All right. Anybody else who has served
14 on a jury previously, anybody have a particularly bad
15 experience on a jury or a particularly good experience? It was
16 okay?

17 All right. Does anyone here, any of the 16 of you,
18 have any family members or close friends who work or have
19 worked in the legal system or in any job that brings them or
20 you into contact with courts or the legal system in any way?
21 Anybody?

22 Tell us about it. Your name.

23 JUROR: Gary Knowles. Are you just talking friends,
24 or are you talking friends where I would then go and visit
25 their place at work?

Jury Selection

1 THE COURT: Let's talk about anything. Anything that
2 may bring you some information about how the legal system
3 works.

4 JUROR: I have a good friend that's a retired judge,
5 but I wouldn't say that he brought any particular information
6 about how the legal system works.

7 THE COURT: In the area?

8 JUROR: Down in Polk County.

9 THE COURT: Okay. Very good.

10 Anyone else? Lawyers or --

11 JUROR: Rebekah Shidner. I actually went to school
12 years ago through PCC for the legal assistant program, and I
13 worked for an attorney as a front desk girl after high school.

14 THE COURT: Do you know what type of practice that
15 attorney had?

16 JUROR: He was -- I believe he was a public defender.

17 THE COURT: Criminal cases?

18 JUROR: Criminal, yes.

19 THE COURT: There was another hand or two in the
20 front row.

21 JUROR: My spouse is --

22 THE COURT: Your name?

23 JUROR: Cody Noffsinger. My spouse is a forensic
24 interviewer in Yamhill County, and so she testifies often
25 almost always in criminal cases.

Jury Selection

1 THE COURT: Very good.

2 JUROR: Kyle Hauger. I have sister-in-law who is a
3 prosecuting attorney in Pierce County, Washington.

4 THE COURT: Thank you.

5 In the back.

6 JUROR: Ben Douglas. I'm a physician, and I've
7 testified a number of times in cases involving patients and
8 worked with attorneys on a variety of cases.

9 THE COURT: Do you work primarily with either
10 plaintiff attorneys or defense attorneys or some of each?

11 JUROR: Some of each.

12 THE COURT: Thank you.

13 Anyone else? Now, you don't need to repeat what
14 you've already said this morning. So we had one person who had
15 some training as a legal assistant or a paralegal. Is there
16 anyone else here who has received any type of legal training or
17 legal education? Any type of training or education relating to
18 the law? I see no hands.

19 Have any one of you or anyone in your immediate
20 family or anyone who is a close friend ever been a participant
21 in a civil lawsuit, to the best of your knowledge, either as a
22 party, let's say a plaintiff -- that's the person who brings
23 the lawsuit who is suing somebody else; or as a defendant --
24 that's the person being sued; or as a witness? We have already
25 heard from some of you who act as witnesses or your spouses

Jury Selection

1 have.

2 So you don't need to repeat what has already been
3 said. But has anyone else ever been a plaintiff, a defendant,
4 a witness, or anyone in your immediate family or close friends
5 to the best of your knowledge?

6 Tell me about that.

7 JUROR: Shelley Langton. Just small claims court?

8 THE COURT: Sure.

9 JUROR: My husband and I were plaintiffs in a small
10 claims case.

11 THE COURT: How long ago?

12 JUROR: That was two or three years ago.

13 THE COURT: I'm not going to ask you the details of
14 the case, but I will ask you this: How was your satisfaction
15 with the legal process? Were you satisfied or dissatisfied or
16 somewhat satisfied?

17 JUROR: Satisfied.

18 THE COURT: Anyone else?

19 JUROR: Ben Douglas. My wife and I were plaintiffs
20 in a case to evict someone off of our property last year.

21 THE COURT: Again, same question generally. Were you
22 generally satisfied with the legal process? Generally
23 dissatisfied?

24 JUROR: We were satisfied.

25 THE COURT: Anyone else?

Jury Selection

1 JUROR: Gary Knowles. Also a small claim, and I was
2 very satisfied with the process.

3 THE COURT: And you brought the claim?

4 JUROR: Yes.

5 THE COURT: Anyone else?

6 I mentioned this case involves not only
7 Ms. Wakefield's individual claim, but also a class action claim
8 where she is a class representative.

9 Have any of you or any member of your immediate
10 family or any close friends, to the best of your knowledge, of
11 course, ever been a participant in a class action, either as a
12 class representative or a class member who then filed a claim
13 in a class action, or I guess as a defendant, but we would have
14 covered that. Anybody at all have any experience in a class
15 action?

16 Yes, sir. Your name.

17 JUROR: Gary Altman. I think it was a product. It
18 was a long time ago. I was just named because I had purchased
19 something. I can't even remember if there was an outcome or
20 anything.

21 THE COURT: Okay. But you don't recall filing a
22 claim in that; am I correct?

23 JUROR: No.

24 THE COURT: Okay. Does anyone here have any
25 particularly strong opinions or feelings -- positive or

Jury Selection

1 negative, either way -- about lawsuits generally? Maybe
2 feeling that we either have too many lawsuits in this country?
3 Or too few? Any strong feelings one way or the other? Let's
4 get your name and feelings.

5 JUROR: Curtis Altman. I think there is probably
6 quite a few too many not real important lawsuits, I guess.

7 THE COURT: Thank you. Do you base that on things
8 you've heard or read or personal experience?

9 JUROR: Curtis Altman. Things I have heard and read.

10 THE COURT: Okay. Now, let me drill down a little
11 bit more specifically and ask about class actions. You may or
12 may not know or read much about class actions. But does
13 anybody here have any strong feelings -- positive or
14 negative -- about class actions one way or the other? Any
15 strong feelings?

16 Let me change topics and ask has any one of you or
17 anyone in your immediate family or anyone that's a close
18 friend, also, of course, to the best of your knowledge, ever
19 worked with or in a telemarketing business or telemarketing
20 industry?

21 One hand up here. Let's get your name and then learn
22 a little bit about your answer.

23 JUROR: Cody Noffsinger. When I was about 17, I
24 worked in telemarketing selling magazines for a short period,
25 less than a month.

Jury Selection

1 THE COURT: Any particularly strong feelings --
2 positive or negative -- generally about telemarketing?

3 JUROR: I wouldn't do it again but --

4 THE COURT: Without prying, why not?

5 JUROR: I just don't like talking on the phone for
6 eight hours a day. It is not enjoyable work.

7 THE COURT: Anyone else? Experience in
8 telemarketing?

9 Okay. Have any of you or any of your immediate
10 family or any close friends, to the best of your knowledge,
11 ever participated in, worked with, had any involvement in what
12 is sometimes called a multilevel marketing business? It is
13 also sometimes called direct marketing or network marketing.
14 Anybody here have any experience in it? Any family members or
15 close friends?

16 Is that a hand or a stretch?

17 JUROR: That's a stretch.

18 THE COURT: I do remember many years ago my wife, who
19 grew up in Michigan, told me the story that when she and her
20 brothers were little kids, her dad took her to a cattle auction
21 and told all the little kids, "Sit on your hands; otherwise, we
22 may have to buy a cow." (Laughter.)

23 Who here has a mobile or cellular phone? I mean
24 "mobile" and "cellular" totally indistinguishably; the same
25 near thing. Almost everybody.

Jury Selection

1 Okay. Now, who has a landline telephone in your
2 home, your house, or your apartment? A landline?

3 Okay. Let me do the opposite. Who doesn't have a
4 landline in your home, house, or apartment?

5 Okay. And one more combination. Who has both a
6 landline in your home, house, or apartment and a mobile cell
7 phone?

8 Keep your hands up. Let's let folks see who it is.

9 Okay. Now, I'm just going to talk to those of you
10 who have a landline telephone in your home, apartment, or
11 house. How many of you have used that landline phone in your
12 home, house, or apartment for business purposes?

13 We don't need to hear about it. Okay.

14 How many of you run or have run or have family
15 members who have run a business out of their home? Let's hear
16 a little bit about that. Your name first. A little bit about
17 the business

18 JUROR: Rebekah Shidner. I work for a consulting
19 company. About two years ago my boss moved our -- he moved out
20 of state. So rather than commuting from Beaverton to
21 Washougal, Washington, he allowed me to set up a home office,
22 and so I work from home.

23 THE COURT: Do you have a separate number for that,
24 or was it the same number?

25 JUROR: No, it is a business separate phone.

Jury Selection

1 THE COURT: With a separate phone number?

2 JUROR: Yes.

3 THE COURT: I will follow up on that in a moment.

4 There was another hand back there.

5 JUROR: Gary Knowles. You're wanting to know if we
6 run any businesses out of our home? Is that correct? My son
7 actually uses my basement as kind of an eBay business location.

8 THE COURT: And is there a separate phone number for
9 that, or is it basically your main phone number?

10 JUROR: His cell phone. It is mostly an
11 Internet-based thing, not phone-based.

12 THE COURT: For anybody who has landline phones in
13 your home, house, or apartment, any of you who have more than
14 one line? Two or more different telephone numbers?

15 And that was the business you just told us about?

16 All right. For those of you who have mobile or
17 cellular telephones, have you ever received a telemarketing
18 call on that mobile or cellular phone?

19 Okay. Most people.

20 For those of you who have a mobile or cellular phone
21 and have received a telemarketing call, sometimes those calls
22 are with a live person, a live voice, and they talk to you.
23 Other times it's an artificial voice, a computer voice, or a
24 prerecorded voice as opposed to a live person making a
25 telemarketing call.

Jury Selection

1 How many of you have received a telemarketing call on
2 your mobile or cellular phone where there was an artificial or
3 prerecorded voice; that is, someone other than a live person?

4 All right. Many hands.

5 Okay. Let me ask some more things now for people
6 with landline phones. With those of you with landline phones
7 in your home, office, or apartment, how many of you receive
8 telemarketing calls on that phone?

9 How many of those -- for those of you who just raised
10 your hand, did that include live persons? Live people doing
11 telemarketing?

12 And what about on a landline phone, any telemarketing
13 calls using an artificial or prerecorded voice?

14 Okay. Now, as between telemarketing calls using an
15 artificial or prerecorded voice as opposed to a live person, I
16 would like to know whether you prefer to receive one kind or
17 the other or whether you like or dislike one more than the
18 other, or whether it really doesn't matter.

19 So for those of you who have received telemarketing
20 calls, who generally either prefers a live voice or
21 affirmatively or more dislikes an artificial or prerecorded
22 voice? Don't raise your hand if it doesn't matter.

23 Let me flip it around. Who actually prefers the
24 artificial or prerecorded voice as opposed to the live person?
25 Anybody?

Jury Selection

1 You prefer the artificial. State your name. I'm
2 curious why.

3 JUROR: Tracie Wallace. Because then I can just hang
4 up on them and not feel bad.

5 THE COURT: It is easier to hang up on a artificial
6 or prerecorded voice than a live person?

7 JUROR: I don't want to talk to the live person. I
8 don't want the call.

9 THE COURT: You don't want the call either way. But
10 it is easier to hang up when it is an artificial or prerecorded
11 voice. Do I understand you right?

12 JUROR: Correct.

13 THE COURT: Who agrees with that?

14 Okay. Does anybody here actually like getting
15 telemarketing calls?

16 Okay. Does anybody think that telemarketing
17 companies provide a valuable or useful service or function?

18 Okay. Who here dislikes telemarketing companies, or
19 at least some of them or the general concept?

20 Who here has ever tried to stop the calls, either by
21 pressing some buttons on the phone or texting stop to some
22 direction? Who has actually tried to stop receiving
23 telemarketing calls?

24 Who here has tried to stop receiving telemarketing
25 calls and have been successful in making some of them or at

Jury Selection

1 least -- making them stop or some of them stop? Have you been
2 successful in making some of them stop?

3 Who feels they have not been successful? They've
4 tried to stop them, and you have not been successful?

5 Okay. Before coming to this trial, before coming to
6 court today, had any of you ever heard of the federal law known
7 as the Telephone Consumer Protection Act, the TCPA?

8 JUROR: Kyle Hauger. I have heard of it -- frankly,
9 I don't know much about it.

10 THE COURT: Okay.

11 JUROR: Cody Noffsinger. I don't know much specifics
12 about the law either, but I actually discovered it trying to
13 get telemarketing calls to stop myself.

14 THE COURT: And how did you try to get them to stop?

15 JUROR: I tried requests, if it was a real person.
16 And I blocked numbers or attempted to block numbers if it was
17 an automated or recording.

18 THE COURT: There is another hand on the front row.
19 Then we will go to the second row.

20 JUROR: Amanda Stanley. I worked for AT&T Wireless
21 for 14 years doing project management sorts of things. It came
22 up earlier in my career, and I don't remember very much about
23 it.

24 THE COURT: What were you doing for AT&T Wireless.

25 JUROR: I was project manager, an analyst, and a

Jury Selection

1 systems architect over those years.

2 THE COURT: Was there a hand in the back?

3 Has anyone here actually ever written a letter, a
4 postcard, sent an email, or in any other way tried to
5 communicate with the Federal Communications Commission or a
6 member of your state legislature or a member of Congress or any
7 state agency or federal agency or Better Business Bureau or
8 anything at all that had anything to do with telemarketing
9 calls or what some people may refer to as robocalls? Have any
10 of you ever communicated with any type of person or agency that
11 I've just described about those issues?

12 Your name first.

13 JUROR: Cody Noffsinger. Your question sparked my
14 memory. About a year ago I called the -- I think it is called
15 the Consumer Bureau in Oregon. I kept receiving sweepstakes
16 calls, which I thought were scams, and I was trying to inform
17 them.

18 THE COURT: Anyone else?

19 All right. I described the case very, very generally
20 early on in this process this morning, enough so that you will
21 know that this involves an individual claim and a class claim
22 against the defendant, ViSalus, alleging that ViSalus has
23 violated the Telephone Consumer Protection Act.

24 I understand your feelings about, whether it be
25 telemarketing or artificial or prerecorded voice calls and

Jury Selection

1 things like that, but in our system of justice it is critically
2 important that a jury and a juror base a decision on the law
3 and on the facts presented at trial.

4 Is there anyone here, because of your feelings about
5 telemarketing or artificial or prerecorded calls, is there
6 anyone here who thinks you will not be able to base your
7 decision, if you are selected to be a juror, solely on the
8 facts that are presented to you by witnesses or exhibits or
9 stipulations? By the way, a stipulation is where both sides,
10 basically for efficiency purposes, have agreed to certain
11 facts. We will give those to you in writing.

12 So your evidence will be the parties' stipulations,
13 what they both agree are the facts, plus any witness testimony,
14 plus any exhibits you see. Those will be the facts presented
15 to you. You may have to make some decisions based on the
16 facts. I will then instruct you as to what the law is that
17 applies. And if you are selected as a juror, your
18 responsibility will be to base a decision, to answer some
19 questions on the verdict form, based solely on the evidence
20 received at trial and the law that I instruct.

21 Is there anybody who feels here, because of any
22 feelings that you may have on any of these topics I've raised
23 with you, you'll be unable to fairly and impartially fulfill
24 those duties as a juror? Anybody? I see no hands.

25 At this time Mary is going to pass out -- let me ask

Jury Selection

1 one more question, sort of a catch-all. Now that you know what
2 this case is about a little bit more, is there anything in your
3 background and experiences -- anything in your experiences or
4 your attitudes or opinions or anything that if you were one
5 side or the other, either the plaintiff or the defendant in
6 this case, in all fairness you would want to know about that
7 juror before you decide who to either select or excuse as a
8 juror in this case? Is there anything that in all fairness
9 that you think they should know about from your experiences or
10 attitudes? Anything at all I haven't covered?

11 I see no hands.

12 Okay. Mary, will you pass out the juror information
13 forms.

14 We are going to start with Juror No. 1, and that will
15 be you, Ms. Cornett, and I'll ask you, one at a time, speak
16 into the microphone. You've got it. Take us through your
17 answers to these questions.

18 So whenever you are ready, Ms. Cornett.

19 JUROR: I am Rebecca Cornett. I'm 58. I was born in
20 Newport, Rhode Island, and I live in Milwaukie, Oregon. I own
21 a home, and I live with my husband. I'm married. He is 57.
22 And I have three children. One just turned 30 on Monday. She
23 lives in Nashville. And our son is 27, and he lives in
24 Portland. A daughter, 26 -- 25 -- and lives in West Linn.

25 I have not been in the military. I have an

Jury Selection

1 associate's degree in sociology. My husband has a general
2 associate's degree. One child has a master's in teaching,
3 another child has a bachelor in communication -- international
4 communication.

5 I work for Aging, Disability and Veterans Services
6 with Multnomah County, and I have been with them for 35 years.
7 I'm a program supervisor there. We have six branches in
8 Multnomah County. I work for the Transition & Diversion Branch
9 where our clients are in nursing homes, and we help them to get
10 out of nursing homes.

11 Do you need to know my spouse's job and children's
12 job?

13 THE COURT: Please. Adult children.

14 JUROR: My husband works part-time. He delivers
15 isotopes for Tradewinds. My oldest is a nanny. My son is a
16 behavioral therapist for autistic children. And my youngest is
17 a teacher.

18 I don't really belong to any organizations.

19 Hobbies, I love to read and camp and go to the beach.

20 For news sources, I generally use the Internet.

21 THE COURT: All right. Thank you very much,
22 Ms. Cornett.

23 Pass the microphone to Mr. Hauger.

24 JUROR: Kyle Hauger. I was born in Eureka,
25 California. I live in Portland in the Alameda neighborhood. I

Jury Selection

1 own a house. I am divorced. I am 49, and I have three
2 children that live with me part-time ages, 15, 12, and 9.

3 I have not been in the military service.

4 I have a master's degree, a bachelor's degree.

5 THE COURT: What's your master's degree in?

6 JUROR: City planning. Bachelor's is in economics.

7 All three children are in school.

8 I'm a city planner; I have been for 20 years.

9 Traffic modeler/data scientist.

10 No jobs for my kids yet.

11 Organizations. A member of the Institute of Traffic
12 Engineers. Also a baseball coach.

13 For leisure activities I enjoy fly fishing and
14 reading and skiing.

15 News sources. Radio and newspaper and a little bit
16 of Internet as well.

17 THE COURT: Thank you, Mr. Hauger.

18 Mr. Noffsinger.

19 JUROR: Cody Noffsinger. Age 24. I grew up in
20 Montana, western Montana. Currently I live in Newberg, Oregon.
21 I have been there for three years now where we own an RV, and
22 we are staying on relatives' property.

23 My spouse is my wife, Kayla, and we don't have any
24 children.

25 I am currently a serving member of the Oregon

Jury Selection

1 National Guard. I received my commission as an engineering
2 officer in Oregon, and that was in about 2016. But this last
3 year I have since transitioned to a Chaplain seat, and I'm in
4 that transition now, but still serving. My unit is out of
5 Salem.

6 Education. I have a bachelor's in engineering, and
7 I'm currently pursuing a master's of divinity. My spouse,
8 Kayla, has her bachelor's in criminal justice.

9 Employment. I work in mechanical engineering as a
10 technician for a company that manufactures dental equipment in
11 Newberg, A-dec. My spouse is a forensic interviewer, formerly
12 a caseworker.

13 Organizations. Actively involved in my church, and
14 that's really the only engagement.

15 Hobbies. I enjoy woodworking and architecture, TV,
16 and movies.

17 As far as news sources, I don't seek it out much. We
18 watch OPB sometimes.

19 THE COURT: Thank you very much, Mr. Noffsinger.

20 Ms. Wallace.

21 JUROR: Tracie Wallace. I am 54 years old. I was
22 born in Newberg, Oregon. I own my home. I live there with my
23 husband. He is 52. I have one son who is 33 years old. I
24 have never been in the military.

25 Level of education. I don't have any degrees. I

Jury Selection

1 have attended Portland Community College. I just did kind of
2 business administration. My husband has -- I'm not sure if he
3 has a degree. He is a cement mixer driver.

4 I work for Lile International as a collections
5 person, credit manager, accounts receivable, and such for the
6 corporate offices.

7 My son works for sales for Leif Auto in Tigard,
8 Oregon.

9 I'm not part of any organizations.

10 I enjoy gardening, reading, golfing, camping, going
11 to the beach, just doing things.

12 I rely a lot on television and the Internet for news
13 sources.

14 THE COURT: Thank you very much, Ms. Wallace.

15 Mr. Koski.

16 JUROR: Good morning. I'm Robert Koski. I am 55. I
17 live in northeast Portland. I own a home. I live with my wife
18 and two daughters. The daughters are 13 and 16. I have never
19 been in the military.

20 I have a bachelor's of science in mechanical
21 engineering. I am a senior engineer for a medical device
22 company.

23 I am a sailor, a remodeler. I get my news from the
24 Internet and television.

25 THE COURT: Thank you very much, Mr. Koski.

Jury Selection

1 Ms. Linborg.

2 JUROR: I'm Tiffany Linborg. I am 30. I was born in
3 Portland. I currently live in Beaverton, and I rent. I am
4 single and not in the military. I got a bachelor's degree in
5 English literature, and I am not currently working, but I was
6 an administrative assistant for a good, long while.

7 Hobbies. Reading, gaming, hiking.

8 And my news sources are mostly NPR.

9 THE COURT: Thank you very much, Ms. Linborg.

10 Ms. Stanley.

11 JUROR: I'm Amanda Stanley. I am 40 years old. I
12 was born in Long Beach, California, and I currently live in
13 Lake Oswego, where I own my home. I have a husband, 41, and
14 two children, a girl, ten and a boy, eight.

15 I did not serve in the military.

16 Undergraduate degree in business. An MBA from
17 Willamette, a PMP certification. My husband has an
18 undergraduate degree. He is an electrical engineer. Children
19 are fourth grade and second grade.

20 Employment. I'm a project manager at a financial
21 services company currently, and I was a systems architect at
22 AT&T Wireless for a number of years.

23 I was a Chi Omega in college. I currently volunteer
24 for the Girl Scouts as a trooper leader and other things as
25 required.

Jury Selection

1 I like reading and fine dining, and I use the
2 Internet for news.

3 THE COURT: Thank you very much, Ms. Stanley.

4 Is it Ms. Shidner (enunciating)?

5 JUROR: Rebekah Shidner. I'm 43. I was born in
6 Albany, Oregon. I currently live in Aloha. I own my home.
7 I'm married. My husband is 41. We have a total of six
8 children. I have three boys, ages 21, 16, and 11. His
9 children are 23, 17, and 10. Five of the six live with us.

10 My adult son works for Oregon Canadian Forest
11 Products as a laborer. I work as an executive assistant for a
12 consultant specializing in orthodontic practices. My husband
13 owns a fitness studio.

14 Education. I have an associate's degree. My husband
15 went to school for exercise science. He does not have a
16 degree. He left to play minor league baseball.

17 We are not with any organizations.

18 Hobbies are hiking, outdoor activities, and working
19 out.

20 News sources is television.

21 THE COURT: Thank you, Ms. Shidner.

22 Let's go to Ms. Langton.

23 JUROR: I'm Shelley Langton. I was born in Midland,
24 Texas, and I live here in Portland, Oregon. I am 47 years old.
25 I own a home as well as rent, as I'm separated currently from

Jury Selection

1 my husband. We have a six-year-old son.

2 I have not been in the military.

3 I have a bachelor's and a master's in special
4 education and a master's in occupational therapy. I work as a
5 pediatric occupational therapist for Multnomah Early Childhood
6 Program.

7 My son is in school.

8 No official organizations.

9 Leisure. I like to hike and do yoga and do outdoor
10 activities with my son. I also do a lot of researching
11 wellness related to healthy lifestyle.

12 And I don't get a lot of news. When I do, it is just
13 through OPB radio usually on the way to work

14 THE COURT: Thank you very much.

15 Mr. Matlock.

16 JUROR: I am Jeremiah Matlock. I am 21 years old. I
17 was born in Oregon. I don't remember exactly where. I
18 currently live in King City, and I rent with my two roommates.
19 I am single. I haven't been married or anything.

20 I have not served in the military at all.

21 I have a high school graduate degree. I had two
22 years of college. I haven't gone back yet.

23 I am currently employed as a cashier at Taco Bell. I
24 have been there for about two years now.

25 I am not part of any organizations.

Jury Selection

1 Hobbies. I play video games, watch YouTube, and go
2 see movies and stuff.

3 News sources. I don't actively seek out news, but if
4 I see something on YouTube, I'll click on it and see what's
5 going on.

6 THE COURT: Thank you, Mr. Matlock.

7 Mr. Jaren.

8 JUROR: I am Jeff Jaren. I live in Gladstone,
9 Oregon. I have been a native all my life. I currently live
10 with my parents, who are retired, and my brother down in the
11 basement. I help him out. He is epileptic. So a lot of help
12 with the family there.

13 I have not been part of the military. I'm an Eagle
14 Scout though.

15 Education. I went to Gladstone High School.

16 Current employment. I have been working retail sales
17 for the most of my life. I currently work at Sportsman's
18 Warehouse off of 82nd.

19 Organizations. I am involved Salem Trail Lines
20 outside of Silver Falls. We build the trails out in Silverton
21 there.

22 Hobbies. Anything outdoor pretty much.

23 News sources. I don't do a whole lot. But if I see
24 anything, it would be the Internet.

25 THE COURT: Thank you, Mr. Jaren.

Jury Selection

1 Mr. Douglas.

2 JUROR: Ben Douglas. I'm 60 years old. I was born
3 in Mississippi and grew up there. I did most of my education
4 there and then moved to California in 1985, where I did my
5 family medicine residency training. I then moved to Oregon in
6 1995 -- '94.

7 I am married. I own a home in Tillamook.

8 Let's see, we have three children. Our oldest lives
9 in Portland and is employed by Portland Center Stage. Our
10 middle child lives in Beaverton and is a bus driver. Our
11 youngest child lives in Tillamook and mostly does
12 landscaping/yard work.

13 I have never served in the military, but my wife was
14 a physician in the Air Force and was a major at the time that
15 she left the Air Force.

16 Education. Medical degree and family medicine
17 training for both me and my wife.

18 Our oldest child did graduate from the University of
19 Portland. Our other two children have attended some college.

20 Employment. I'm currently employed by Adventist
21 Health. I am a family medicine physician in Tillamook. I also
22 am a hospice physician for Adventist Health in Tillamook and
23 the Portland office. My family medicine practice focuses on
24 what is called lifestyle medicine with an emphasis on whole
25 foods, plant-based foods, avoiding medication as much as

Jury Selection

1 possible, avoiding supplements, fad diets, and that sort of
2 thing.

3 Organizations. I'm very active in our church. I am
4 the volunteer music director at our church.

5 Hobbies. Anything that has to do with music. I'm an
6 amateur musician. I lead a guitar community class, and I also
7 like to run.

8 News sources. I don't seek out a lot of news, but
9 most of what I hear comes from NPR.

10 THE COURT: Thank you very much, Dr. Douglas.
11 Dr. Knowles.

12 JUROR: Gary Knowles. I am 63 years old. I was born
13 in Long Beach, Oregon. I currently live in Monmouth, Oregon,
14 where I own my own home, living with my wife all of those
15 years. I have four children, three of which live in my same
16 town also; one living in Florida.

17 I have never served in the military. I'm an
18 optometrist, and so I have got a postgraduate degree, as does
19 my wife. All four of my children are also optometrists.

20 I am currently retired. My kids came back and took
21 over my job.

22 We spend a decent amount of time doing vision mission
23 trips, which is probably my civic involvement.

24 I play a lot of golf.

25 Most of my news source is NPR, but I really don't

Jury Selection

1 seek out much news.

2 THE COURT: Thank you, Dr. Knowles.

3 Ms. Heberling (enunciating).

4 JUROR: Heberling. I am Bridget Heberling. I was
5 born in Spokane, Washington. Currently I live in Milwaukie,
6 Oregon. We own our home. I am married. We are both 62. Our
7 son lives in Klamath Falls. He is 32. Our daughter lives in
8 Portland, and she is 29. No military service. I have a B.A.
9 in business. My husband has a B.A. in electrical engineering.

10 Our daughter has a master's in planning. Our son is
11 a physician's assistant. He has a master's in science.

12 I am currently retired. Prior to retirement, my last
13 job was preschool teacher.

14 Church would be my organization.

15 I like camping, hiking, reading.

16 News source would be TV, newspaper.

17 THE COURT: Thank you very much, Ms. Heberling.

18 Mr. Altman.

19 JUROR: Curtis Altman. 69. Charlotte, Michigan.
20 Own in Oregon City area. Married. Two kids in their 40s.

21 U.S. Embassy. Lance corporal. '68-'70, infantry.

22 Eleventh grade.

23 Wife and kids are high school.

24 Retired carpenter. The wife retired -- she worked at
25 the school kitchen.

Jury Selection

1 NRA, VFW, and AARP.

2 Leisure. Pretty much anything outdoors.

3 Newspaper and radio for news sources.

4 THE COURT: Thank you, Mr. Altman.

5 Mr. Sedell.

6 JUROR: David Sedell. I'm 31. I was born in North
7 Charleston, South Carolina. I currently live in Beaverton,
8 Oregon. I own my home there. I am married. My wife is 32.
9 She is currently not working. She is pursuing -- well, she has
10 a bachelor's degree in biology, and she is currently pursuing a
11 paralegal certificate.

12 I have a four-and-a-half-month-old daughter.

13 No military service.

14 Education. I have a bachelor's degree in business.

15 I have an MBA from Carnegie Mellon.

16 I am currently a product manager at Intel.

17 No organizations.

18 In terms of leisure, pretty much anything related to
19 cars, TV, movies.

20 News sources. I usually listen to NPR in the
21 morning. I usually watch local news at night, and, of, course
22 Internet.

23 THE COURT: All right. Thank you, Mr. Sedell.

24 All right. Folks, here is what we are going to do
25 now: In a few moments we will take a mid-morning break. When

Jury Selection

1 we come back, I'll invite one of the attorneys for the
2 plaintiff to ask you some questions, probably up to about 15
3 minutes. Then I'll invite one attorney from the defendant to
4 ask you some questions up to about 15 minutes. Then I'll ask
5 all of the prospective jurors to go into the hallway. The
6 attorneys will make their jury selections, or really their
7 exercise their challenges, and then we will select and tell you
8 who the jury is, and I'll excuse everybody else.

9 But for right now what I would like the 16 of you to
10 do is look to your left and look to your right. Figure out
11 where you are sitting. You can leave your property on your
12 chair right now, because when we come back after our break, I
13 would like you to be in exactly the same chairs, please. If
14 you have any questions, ask Mary. She has got the chart.

15 Then, also, please remember, do not discuss this case
16 or anything to do with it among yourselves. Don't look
17 anything up. Don't do any research. In addition, don't
18 discuss anything with the parties; the lawyers on either side.
19 I'm going to instruct them not to have any communication at all
20 with you. You may bump into one or more of them in the hallway
21 or in an elevator or a restroom. Please do not say anything to
22 them. They're not going to say anything to you. Because of
23 this instruction, nobody is going to think that either side is
24 being rude. You're just complying with my instructions.

25 So we will take a 20-minute recess. We will get you

Jury Selection

1 back in these chairs at five minutes after 11:00 on that clock.

2

3 (Open court; jury not present:)

4 THE COURT: Mary, if you could close the door too.

5 All right. We are here without any of the

6 prospective jurors. It is 10:45 now. We are making excellent

7 time. Let me ask both sides their views on something. We are

8 making very good time. We have to end by 1:00 today. I think

9 we can either do opening statements this morning, if both sides
10 are willing to do that. That's probably a good use of time.

11 The other option is we can bring Mr. Shawn Davis in
12 by noon, or whenever we are ready for him, and do a 104 hearing
13 on that issue this morning as soon as we are done selecting our
14 jury and excusing the jury. We can go that direction
15 alternatively. If we do the opening statement now, I would
16 like to have Mr. Davis at 8:00 a.m. tomorrow.

17 Any preferences from either side?

18 MR. DOVEL: Your Honor, the plaintiff would prefer to
19 do the hearing with Mr. Davis today and do openings tomorrow
20 morning.

21 THE COURT: Is that acceptable to the defendant?

22 MR. O'NEAL: Yes.

23 THE COURT: Okay. Make sure you get Mr. Davis here.

24 MR. DOVEL: He is in the courtroom. He is in the
25 courtroom, and so he is ready.

Jury Selection

1 THE COURT: Welcome.

2 All right. You can have a 15-minute recess. We will
3 resume with our jurors. Then who will be doing the voir dire
4 for the plaintiff?

5 MR. DOVEL: I will, Your Honor.

6 THE COURT: And who will be doing the voir dire for
7 the defendant?

8 MR. O'NEAL: I'm sorry, Judge?

9 THE COURT: Who will be doing the voir dire for the
10 defendant?

11 MR. O'NEAL: Myself, Judge.

12 THE COURT: Very good. We will pick up with
13 plaintiff and then defendant starting at five minutes after
14 11:00.

15 MR. O'NEAL: Before we recess, Judge, our materials,
16 for purposes for examining Mr. Davis, are back at our hotel
17 room. We can take a break and go get them.

18 THE COURT: Now is a great time to send someone back
19 for them. That way they can be retrieving those materials
20 while you are talking to the jurors.

21 (Recess.)

22 (Open court; jury not present:)

23 THE COURT: Are we ready to bring the prospective
24 jurors in?

25 Counsel, remember, as soon as you are done with your

Jury Selection

1 voir dire, I will see the lawyers at sidebar and ask about
2 cause.

3 (Open court; jury present:)

4 THE COURT: We have almost everyone.

5 Counsel, you may be seated.

6 All right. Welcome back, prospective jurors. At
7 this time I am going to invite an attorney for the plaintiff to
8 ask you all some questions.

9 Mr. Dovel.

10 MR. DOVEL: Thank you, Your Honor.

11 Good morning.

12 JURY PANEL: Good morning.

13 MR. DOVEL: My name is Greg Dovel. I am from Yakima,
14 Washington. I live today in Los Angeles. I am married, and I
15 have four kids.

16 Let me start with Mr. Matlock, if I could. "Brutal
17 honesty." What do those words mean to you? "Brutal honesty."

18 JUROR: Jeremiah Matlock. To me it feels like it
19 means that you are being completely honest with someone, even
20 it might hurt their feelings or make them upset. You are being
21 completely honest in telling them you how you feel deep down.

22 MR. DOVEL: That's what I'm going to need. I need
23 you to be brutally honest with me, even if it is going to hurt
24 my feelings; just how you feel deep down. Can you do that?

25 JUROR: Yes.

Jury Selection

1 MR. DOVEL: Can everyone here do that? I have got
2 about 10 or 15 minutes to talk to you, and I expect you to do
3 most of the talking. I have a few questions to ask, and I ask
4 you to be brutally honest with me.

5 To start, I'm going to tell you about something that
6 really bothers me about this case when I first heard about it;
7 something that made me not want to be part of this case. This
8 case is about some people that got some annoying phone calls.
9 It is not about somebody who suffered a personal injury, lost a
10 loved one, lost a life. It is not someone who was ripped off
11 for a lot of money. There is not someone who came up with a
12 great invention, got a patent, and a big company stole it from
13 them. It is just some annoying phone calls.

14 When I first heard about this, I thought, why make it
15 a federal case about it? What are we doing in court?

16 MR. O'NEAL: Objection, Your Honor.

17 THE COURT: Sustained. Let's ask a question, please.

18 MR. DOVEL: Yes, Your Honor.

19 So brutal honesty, when you first heard about this
20 case and heard what it was about, what did you feel? What did
21 you think? Who wants to start?

22 THE COURT: Remember to state your name first,
23 please, and when a microphone gets to you.

24 JUROR: Bridget Heberling. When I first heard what
25 it is about, I thought, yeah, I don't like those phone calls

Jury Selection

1 either.

2 MR. DOVEL: Thank you for that. Thank you for
3 volunteering. I have another question for you. But did you
4 think, why are we in court here? You have gotten calls like
5 that, you raised your hand about that, and you never filed a
6 lawsuit, right?

7 JUROR: No.

8 MR. DOVEL: Does it bother you that we are here in
9 court trying to hold someone accountable for making calls like
10 that?

11 JUROR: No. I think there is a reason.

12 MR. DOVEL: Who else? I need to hear from as many
13 people as possible.

14 THE COURT: Just state your name first.

15 JUROR: Ben Douglas. I was actually not familiar
16 with the law that is involved with this case, but I was pleased
17 to know that there was a law that helps prevent unwanted phone
18 calls because in my work I actually have two phones now. One
19 is dedicated to work; one is a personal phone. The newest
20 phone I got, I get lots of phone calls for the person who used
21 to have the phone number. It interrupts my day multiple times
22 when I'm trying to provide patient care. So I was glad to know
23 that there is a law that prevents some of that.

24 MR. DOVEL: Thank you.

25 JUROR: Tracie Wallace. I guess my first brutal

Jury Selection

1 honest thought was hang up. But at the same time I agree with
2 the other two people here that there must be a reason, and also
3 that if there is a law that is to take into consideration that
4 we are here, I would like to know what that is personally so I
5 may one day be in a position that I might want to exercise my
6 rights as well.

7 MR. DOVEL: Thank you, Ms. Wallace.

8 Who else? Who is next?

9 Mr. Jaren, could I get your comments on this? Thank
10 you.

11 JUROR: Jeff Jaren. I get many of these annoying
12 phone calls, whether it's on my home or on my cell phone. I
13 tend to just ignore them, if it's not on my phone book list.
14 If it is that important, they will leave a voice mail for me.

15 MR. DOVEL: You just ignore them?

16 JUROR: I just ignore them.

17 MR. DOVEL: Have you ever considered trying to do
18 something -- to bring a lawsuit -- to stop people from making
19 these kind of illegal calls?

20 JUROR: I have not in the past.

21 MR. DOVEL: Why not?

22 JUROR: I'm pretty busy with work and just haven't
23 thought about taking the time to do it.

24 MR. DOVEL: Thank you, Mr. Jaren.

25 Mr. Koski, I would like to hear from you on this if I

Jury Selection

1 could.

2 JUROR: Robert Koski. I think you would be hard
3 pressed to find anyone who enjoys a cold call. They are
4 offensive.

5 MR. DOVEL: Those calls are offensive, but should we
6 be taking your time, the judge's time here in court trying to
7 hold somebody accountable for it?

8 JUROR: That's a good question. I have attempted to
9 fill out Do Not Call lists, and it feels like that has been
10 mostly ineffective.

11 MR. DOVEL: So what should we do?

12 JUROR: That's a good question.

13 MR. DOVEL: Does anyone have any thoughts on what we
14 should do? Let me ask Mr. Altman, if I could have you weigh in
15 on this.

16 I remember you said that you thought that there were
17 too many lawsuits about unimportant things. This is pretty
18 unimportant. Is this one of those lawsuits?

19 JUROR: Well, I haven't heard anything other than
20 what has been said this morning, so I'm not going to make that
21 decision until -- but yeah, I do think that there are quite a
22 few lawsuits. Whether this would be one or not, I don't know,
23 that shouldn't go as far as they do, I guess.

24 MR. DOVEL: When you first heard about what this case
25 was about, what was your reaction? Brutal honesty, what was

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1 your reaction?

2 JUROR: That it would be boring.

3 MR. DOVEL: That it is going to be boring sitting
4 through this kind of stuff.

5 JUROR: I was on a similar one once before and it
6 was -- all the technical talk and different -- for me it gets
7 kind of boring.

8 MR. DOVEL: All right. Thank you.

9 Does anyone else have any thoughts they want to share
10 about their initial reaction when they heard about this case?

11 Let me ask you about another topic, and that's class
12 actions. When I heard about this case --

13 THE COURT: Let's go to a question.

14 MR. DOVEL: Yes, Your Honor.

15 In this case you are going to get to meet one of my
16 clients, Lori Wakefield. There are another approximately
17 800,000 people that are part of this class. They are not going
18 to testify. We are going to have to prove their case based
19 upon information.

20 MR. O'NEAL: Objection, Your Honor.

21 THE COURT: Sustained. Let's get to a question.

22 MR. DOVEL: Yes, Your Honor.

23 When anyone first heard this was about a class
24 action, and we have got this one class representative and many
25 other folks are not going to be here, did you have any thoughts

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1 or feelings about that one way or the other?

2 Ms. Cornett, if I could ask you to weigh in on that
3 for us.

4 JUROR: Rebecca Cornett. I guess for me it is just I
5 always like learning things, so I hadn't heard about any of
6 this. So it's just more of a curiosity and about how the
7 process works.

8 MR. DOVEL: Well, you are going to get to hear
9 specific testimony --

10 MR. O'NEAL: Objection, Your Honor.

11 THE COURT: Overruled.

12 MR. DOVEL: You are going to get to hear specific
13 testimony from one person, Lori Wakefield. For the class, we
14 have got to rely on documents and stuff we get from defendants.
15 Is that going to trouble you to have to figure out what
16 happened to the class if you don't hear any of those people
17 here testifying?

18 JUROR: I mean, I think as long as the information is
19 presented and you can look at it, then I wouldn't have an issue
20 with it.

21 MR. DOVEL: Information you could look at?

22 JUROR: Yes.

23 MR. DOVEL: Mr. Hauger, what about you? What are
24 your thoughts about whether you would be troubled that you are
25 not going to be hearing any testimony from most of the people

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1 in the class?

2 JUROR: Kyle Hauger. No, I think it is fine to have
3 a representative here of the class. Depending on how large it
4 is, I cannot imagine actually sitting through the entire class
5 testifying. But I do think that it is important to at least
6 have one live person here and potentially to have a face on the
7 case. But in terms of other documentation or other documents,
8 I'm comfortable with that.

9 MR. DOVEL: Thank you. I appreciate that.

10 Mr. Noffsinger, could I ask you to weigh in on that.

11 JUROR: I don't have any issues with the class or
12 having sole representation on behalf of the class, I guess. I
13 don't have any strong feelings.

14 MR. DOVEL: In this case if you are a juror, you're
15 going to have to make a decision for the class based on
16 documents, not live testimony from people describing the calls
17 they got.

18 Do you have any thoughts about whether that might be
19 an issue for you one way or the other?

20 JUROR: I don't think it is an issue. I think it
21 will help having as much testimony as we can, and we will be
22 able, as jurors -- I propose -- be able to empathize with the
23 descriptions. Even though they are not here, I think we will
24 be able to see themes throughout the testimony that gives
25 credibility to the class.

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1 MR. DOVEL: Thank you. I appreciate that.

2 Can you pass the microphone over to Mr. Koski.

3 Mr. Koski, can I hear from you on this subject of
4 class action. We are going to see testimony from one live
5 person. The other 800,000 are not here to testify.

6 JUROR: I don't have a problem with one
7 representative from the class. The whole affair is surprising.

8 MR. DOVEL: Say more about that.

9 JUROR: As I said, cold calls are offensive in their
10 nature. I think collectively we receive them and turn them
11 down. They are annoying, but we move on with our dinner, and
12 so I find it interesting that it has come to this.

13 MR. DOVEL: When you say "interesting," be brutally
14 honest with me. Are you saying you are kind of skeptical that
15 we should be spending our time here; that you would rather be
16 on a different case?

17 JUROR: I don't know what is at stake here. I don't
18 know what offenses are alleged. I only know how I personally
19 have been offended by this telemarketing. Essentially I accept
20 it and move on.

21 MR. DOVEL: In this case you are not going to be
22 making a determination about how much money to award. You are
23 going to be determining whether the defendant, ViSalus, should
24 be held accountable, and if they did it, how many calls they
25 made. That's it. You are not going to be awarding any money.

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1 Is that going to frustrate you?

2 JUROR: No, that will not.

3 MR. DOVEL: Ms. Linborg, can I ask you a question?

4 On this topic of class actions, we have got one person who is
5 going to testify. Most people are not. We have to use the
6 documents that we get from the defendant to prove these class
7 claims. Does that cause you any concern, or do you have any
8 questions about that?

9 JUROR: Not really.

10 MR. DOVEL: When you first heard about this case, did
11 you think, what's the big deal? What were your thoughts?

12 JUROR: Maybe a little, but I think everyone is
13 entitled to have their own opinion. Someone might feel
14 differently than I do, and that's perfectly okay.

15 MR. DOVEL: I want to know your opinion. Be brutally
16 honest with me. Is this something that you think is not worth
17 spending our three days on?

18 JUROR: I guess I can't honestly say, like many of
19 these people are saying, until I have more information. To be
20 brutally honest, I don't have an answer.

21 MR. DOVEL: Thank you. I appreciate that.

22 Mr. Neuls, I know you've served on a jury. I believe
23 you were the jury foreperson; is that right?

24 JUROR: Correct.

25 MR. DOVEL: In that experience it wasn't a case that

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1 involved some annoying phone calls, right?

2 JUROR: No.

3 MR. DOVEL: When you heard this case was going to be
4 about phone calls that are alleged to violate a federal law,
5 and that was all at stake, what were your thoughts? What did
6 you think about that?

7 JUROR: Oh, I was mildly disappointed. I was hoping
8 for something more exciting.

9 MR. DOVEL: Thank you. I appreciate that.

10 THE COURT: Mr. Dovel, you have about two minutes
11 left.

12 MR. DOVEL: Thank you very much, Your Honor.

13 That case, was it a criminal case or civil case?

14 JUROR: Criminal.

15 MR. DOVEL: In this sort of case, for us to prove
16 what we have to prove, we have to prove it by a preponderance
17 of the evidence, which means --

18 THE COURT: Let's ask a question.

19 MR. DOVEL: Some people think that if we have got to
20 prove our case only by a preponderance, showing it is more
21 likely true than not true, that it is not fair to the
22 defendant, and we should have to prove it by overwhelming
23 evidence, by beyond a reasonable doubt, not just a little bit
24 more true than not true.

25 Does anybody think it wouldn't be fair to the

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1 defendant if all we have got to do is show just it's more
2 likely true than not true? You've got the microphone,
3 Mr. Neuls. What do you think about that?

4 JUROR: I'm good with that.

5 MR. DOVEL: Does anyone, when they hear about that
6 concept, think, well, I kind of move more toward the people
7 that think it is not fair? In a case like this we should have
8 to prove it beyond a reasonable doubt. Does anybody have that
9 kind of a view?

10 Mr. Matlock, any thoughts about that?

11 JUROR: Jeremiah Matlock. I can see why people might
12 think that, but it seems like for this case that we don't have
13 the option to hear from like hundreds of people, plus I don't
14 think anybody would want to sit through hundreds of people. I
15 feel as long as the documents are like accurate and factual and
16 aren't just like random people saying, "Oh, this happened," and
17 it just ramps up and it actually did happen, I think it should
18 be fine.

19 MR. DOVEL: Are you okay being part of a case where
20 we just have to prove that it is more likely true than not
21 true?

22 JUROR: I prefer it to be like -- I'm trying to find
23 the word -- I prefer it to be proven beyond a shadow of a
24 doubt, but it doesn't seem like we will have the option for
25 that case. So I am okay with it being more likely true, if you

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1 can prove it that way.

2 THE COURT: That's a very good place to end it. By
3 the way, members of the jury, I will tell you that in a
4 criminal case the standard is proof beyond a reasonable doubt.
5 In a civil case like this one it is proof by a preponderance of
6 evidence. After we select our jury this morning, I will give
7 the jury some preliminary instructions. One of the things that
8 I'm going to do is explain what it means to prove something by
9 a preponderance of the evidence. I will even give you an
10 example.

11 Thank you very much.

12 Thank you, Mr. Dovel.

13 MR. O'NEAL: Thank you, Judge.

14 THE COURT: 15 minutes.

15 MR. O'NEAL: I have my cheat sheet.

16 Mr. Koski --

17 JUROR: Good morning. Robert Koski.

18 MR. O'NEAL: John O'Neal.

19 When you said "cold calls," what did you mean?

20 JUROR: Unknown phone numbers calling by automated or
21 solicitors.

22 MR. O'NEAL: Calls coming from people that you didn't
23 know?

24 JUROR: Yes.

25 MR. O'NEAL: Calls coming from companies that you

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1 didn't give their phone numbers or have any connection with?

2 JUROR: Correct.

3 MR. O'NEAL: Do you think there is a difference
4 between cold calls like you are describing and calls that may
5 be made by a company where the person who is getting the call
6 gave that company their telephone number?

7 JUROR: Is there a difference? Is that your
8 question?

9 MR. O'NEAL: Yes.

10 JUROR: Absolutely. I keep getting called repeatedly
11 by a window company as an example. I gave them my phone
12 number. They are persistent to the point of becoming
13 offensive, but I signed up for it. I gave them my phone
14 number. So I accept that.

15 The predominance of calls I receive I have no idea of
16 their origin. I'm just amazed that this tactic or technique or
17 sales method -- it must be tremendously effective because, as I
18 said before, I've never met anyone that says, "Hey, that was
19 great. I got three robocalls last night, and I got offered
20 some great services." I don't know anyone who is a fan of
21 this.

22 MR. O'NEAL: Let me follow up with the rest of you.
23 Do any of you see a distinction between a call that comes from
24 somebody that you don't know or you didn't give your numbers to
25 as opposed to getting a call from someone that you did?

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1 JUROR: Tracie Wallace. Hi.

2 I believe and feel there is a distinction, when you
3 give your number to somebody and they call you, you have a
4 conversation. If you opt not take their services and you ask
5 them to take you off their calling list, and you are no longer
6 interested, then that's where it should cease.

7 MR. O'NEAL: Anybody else? Does anybody else want to
8 comment? Yes, sir.

9 JUROR: Kyle Hauger. Yeah -- personally I would draw
10 the line where if the particular individual or company that I
11 gave my phone number to, if they then sold it to another
12 company, that would be annoying and out of line and basically
13 not had my permission to call me then at that point. So it is
14 kind of passing my number downstream, I guess.

15 MR. O'NEAL: Anybody else?

16 Ma'am, I think you mentioned like "stop calling me."
17 Does anybody have a view on whether if you hand out your phone
18 number, if you voluntarily give it to someone or a company, and
19 they call you, and at the time that the call is made there
20 hasn't been an express instruction "don't call me"?

21 Does anybody think that's different than perhaps the
22 cold calls that you have heard talked about today?

23 Yes, ma'am.

24 JUROR: Shelley Langton. I think there is a
25 distinction when you give your phone number as part of sort of

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1 signing up with an organization or the check-out or something.
2 There is a distinction between just providing that and then the
3 company feeling -- taking that to, well, let me just be
4 incessantly calling or very persistent without expressly
5 indicating that when you are giving them your information.

6 MR. O'NEAL: Thank you.

7 You heard Mr. Dovel talk about Ms. Wakefield being
8 the only member of the class that's going to come testify. I
9 think a couple of you commented to try to have serial testimony
10 isn't going to be the greatest. But I would like to ask you
11 about this: What about corroborating evidence for the rest of
12 the class? Does anybody think that they would immediately
13 accept without further question that Ms. Wakefield's
14 experience, at least what she testifies about, has to be the
15 same for everybody else in the class, or would you be looking
16 for other evidence related to what may have happened to
17 different people?

18 Yes, sir.

19 JUROR: Jeremiah Matlock. I prefer like hearing
20 different people's experience with what happened. Hearing one
21 person is like, "Okay. It just happened to one person. It is
22 not that big a deal." But if it happened to multiple people
23 and to have like the same type of experience, and it wasn't
24 good, then it makes sense that there would be a case like this.

25 MR. O'NEAL: And if you heard evidence that perhaps

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1 some people were a business, and they gave out their number to
2 my client, or if somehow you heard some evidence that they were
3 working as a promoter, which is basically serving as a sales
4 agent, an independent contractor, does anyone think that might
5 influence their decision on how to handle this case one way or
6 the other? No.

7 Who has heard of the phrase "corroborating evidence"?
8 Anybody heard of that before?

9 Yes, ma'am. What does that mean to you?

10 JUROR: Rebekah Shidner. To me it means that people
11 basically are all on the same page with respect to the facts
12 and the information that has been presented, and so they are
13 all having similar experiences, and it's all being combined
14 together to be presented as one.

15 MR. O'NEAL: Let me ask a different question. I'm
16 going to spin Mr. Dovel's question on its head. How many would
17 find it significant in their decision if it was in fact true
18 that Ms. Wakefield is the only person who came in and
19 testified, and you heard evidence that that's because other
20 people had different experiences? Maybe they didn't come in
21 and testify to it, but there was evidence that suggests that
22 one shoe doesn't fit at all.

23 What's your thoughts on that? How would you react to
24 that?

25 JUROR: (Amanda Stanley; unannounced) I guess I'd

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1 feel like the concept of a class is an efficient way to go
2 about this in terms of our legal system to be able to not
3 overload and what have you. So I feel they are going to pick a
4 candidate who makes a good case for this, and that's what I'm
5 going to have to go off. That's what my decision will be based
6 on -- that testimony and any other testimonies provided.

7 MR. O'NEAL: What's your thoughts on that?

8 JUROR: David Sedell. Folly Beach. Very nice, rough
9 surf.

10 MR. O'NEAL: I know.

11 JUROR: I think it can be difficult, you know, if the
12 situation is not kind of the same across all class members. I
13 think we have to take it -- take it at face value that there is
14 some overlapping evidence between the present party and the
15 class members.

16 Unfortunately, without the subjectivity of the other
17 class members, I think we're missing some. But if we get good
18 evidence, good facts from the present member, and we see
19 evidence that shows it is fairly similar across the class
20 members, then I think it might be fair.

21 MR. O'NEAL: This is one of the questions that
22 His Honor alluded to, but it is also important for me because I
23 have got to make sure --

24 THE COURT: Let's get to a question.

25 MR. O'NEAL: Yes, Your Honor.

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1 The judge is going to give you instructions that will
2 outline what I'm going to call the elements of the claim. It
3 will be 1, 2, 3, 4, 5, something like that.

4 Does anybody feel that they would not be able to go
5 through and examine each one of those elements closely to make
6 sure that plaintiff has met the burden for each one?

7 Does anybody think that maybe that their feelings
8 about telemarketing or anything like that might say, "No, I
9 don't need to pay attention"? Anybody have that thought?

10 How about if the plaintiff -- if His Honor gave you
11 several elements and maybe the plaintiff proved 1 and 2, but
12 didn't prove 3 and 4? Does anybody have a problem returning a
13 verdict against the plaintiff in that instance?

14 Here is the question that's on everybody's mind: How
15 about your experiences with telemarketing? Do you believe that
16 you will be able to set those aside and be able to make a
17 decision on facts in this case, even though we are dealing with
18 a company that has been accused of making a lot of telephone
19 calls? That's what we really want to know.

20 Is anybody going to not be able to do that?

21 All right. Your Honor, I'm done.

22 THE COURT: All right. Thank you very much,
23 Mr. O'Neal.

24 Let me see one or two counsel from each side at the
25 side bench, please.

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1 (A discussion was held off the record at sidebar.)

2 (Open court; proceedings resumed:)

3 THE COURT: Members of the prospective jury panel, I
4 am now going to invite you all to go to the hallway. I think
5 this time it will be about 15 minutes. Here is the plan: When
6 we call you back in 15 minutes, you are not going to be seated
7 in the jury box. So take your property with you to the
8 hallway.

9 Everybody, when we open the doors in about 15
10 minutes, Mary will then call the names of the eight people who
11 will be on this jury. We don't do any alternates. All eight
12 will be on the jury. So at that point I will excuse everybody
13 else. I will then give preliminary instructions to our
14 eight-person jury, Mary will show you access to the building,
15 and I'll explain everything to the jury at that time.

16 But for right now I would like to ask every
17 prospective juror in the courtroom to step into the hallway for
18 about 15 minutes. Mary will close the door. Don't come in
19 until the door is open, but be available in 15 minutes.

20 (Open court; jury not present:)

21 THE COURT: All right. Relax.

22 We are here without the prospective jurors.

23 At sidebar the defendant challenged for cause
24 Mr. Robert Koski. He is in seat No. 5. There was no objection
25 to that from the plaintiff, and so I'm excusing Mr. Koski for

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1 cause.

2 Am I correct, counsel for plaintiff?

3 MR. JACOBSON: Yes, Your Honor.

4 THE COURT: Counsel for defendant, am I correct?

5 MR. O'NEAL: Yes, Judge.

6 THE COURT: Okay. So Mr. Koski is gone for cause.

7 That means that we now have 15 people sitting up
8 there, but we only need, since each side has three
9 peremptories, we really need 14, because 14 minus six is eight.
10 We will have an eight-person jury. No alternates. They will
11 all deliberate to unanimity. So that means for all purposes
12 Mr. Sedell in seat No. 16 should be gone from your
13 consideration.

14 So that leaves 14 people when we take away
15 Mr. Sedell, who is in seat 16, and when we take away Mr. Koski.
16 There are now 14 people. I would like three peremptories. We
17 would like to go back and forth, one each. Three peremptories
18 from the plaintiff; three from the defendant. And if you
19 choose not to exercise one, that's fine, but you don't get to
20 come back at the end and exercise it. And then the first eight
21 people by seat number will be our jury.

22 So if you happen to not exercise something, nine
23 people will be remaining. The first eight by seat number will
24 be the jury. In a moment I'll ask for the plaintiff's first
25 peremptory and then defendant's; then plaintiff's second and

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1 defendant's; and plaintiff's third and then defendant's.

2 Any objection to this procedure or any questions?

3 MR. DOVEL: No objection. Will we have a minute to
4 talk?

5 THE COURT: Yes, but not much more than a minute.

6 Any objections to the procedure or any questions?

7 MR. O'NEAL: So, Judge, we drop currently the one in
8 16?

9 THE COURT: Yes. So basically take out of your
10 consideration Mr. Koski in seat 5 and Mr. Sedell in seat 16
11 because he is the last one on this list. That leaves 14.

12 So any objections to this procedure or any questions
13 from the defendant?

14 MR. O'NEAL: No, Judge.

15 THE COURT: Okay. I'll give you a minute.

16 (Pause in proceedings.)

17 THE COURT: May I please have plaintiff's first
18 strike?

19 MR. JACOBSON: Plaintiff will excuse Curtis Altman,
20 No. 15.

21 THE COURT: No. 15, Mr. Altman, is excused.

22 Defendant's first peremptory, please.

23 MR. O'NEAL: Defendant will excuse Dr. Douglas.

24 THE COURT: And that is No. 12. Thank you.

25 Plaintiff's second peremptory.

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1 MR. JACOBSON: Plaintiff will excuse Mr. Matlock, who
2 is in seat No. 10.

3 THE COURT: 10. Mr. Matlock is excused by the
4 plaintiff.

5 Defendant's second peremptory, please.

6 MR. O'NEAL: Defendants will excuse Mr. Noffsinger,
7 Juror No. 3.

8 THE COURT: No. 3, Mr. Noffsinger.

9 All right. Plaintiff has one more peremptory;
10 defendant has one more peremptory.

11 Whenever you are ready, I'll take plaintiff's final
12 strike.

13 MR. JACOBSON: Mr. Jaren, who is in seat No. 11.

14 THE COURT: No. 11, Mr. Jaren.

15 Whenever you are ready, I'll take defendant's final
16 peremptory strike.

17 MR. O'NEAL: We will excuse Mr. Knowles.

18 THE COURT: No. 13, Dr. Gary Knowles.

19 All right. In a moment, Mary and I will compare our
20 notes, and then we will tell you who we think remains for the
21 jury and ask you if you all agree and give you the seat
22 numbers, 1 through 8. Later today or tomorrow morning Mary
23 will give you an actual seating chart.

24 All right. Mary, let's you and I compare notes. If
25 I've got this right, we have a jury of seven women and one man.

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1 Counsel, listen up too and then tell me if you agree.

2 In seat No. 1 is Ms. Rebecca Cornett.

3 Mary, do you agree?

4 THE CLERK: Yes.

5 THE COURT: No. 2, Mr. Kyle Hauger.

6 No. 3, Ms. Tracie Wallace.

7 No. 4, Ms. Tiffany Linborg.

8 No. 5, Ms. Amanda Stanley.

9 No. 6, Ms. Rebekah Shidner.

10 No. 7, Shelley Langton.

11 And No. 8, Ms. Bridget Heberling.

12 Plaintiff's counsel, do you agree?

13 MR. DOVEL: We agree, Your Honor.

14 THE COURT: Defendant's counsel, do you agree?

15 MR. O'NEAL: We agree.

16 THE COURT: Let's bring them in, Mary. I'm going to
17 excuse the others and go right into preliminary instructions
18 and then send them out for the day.

19 Counsel, please be seated. Thank you.

20 Welcome back, all prospective jurors. What has just
21 occurred after the voir dire, after the questioning, was that
22 the parties have had an opportunity to exercise their
23 peremptory challenges, which results in a prospective juror
24 being excused/not being selected. No reason needs to be given,
25 and it is not personal. No one who is excluded should in any

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1 way feel insulted or slighted. This is just part of the
2 process to make sure that we have a jury who is not only fair
3 and impartial, but one that both sides accept as fair and
4 impartial.

5 So, Mary, will you please read the names of our
6 eight-person jury. There will be no alternates here. These
7 will be our eight jurors.

8 Now what we are going to do is seat you four in the
9 front row with No. 1 being closer to me. So seats 1 through 4
10 in the front row and then 5 through 8 in the second row, seat 5
11 being closest to me.

12 Mary, please call the jurors and please come up when
13 you hear your name.

14 THE CLERK: Rebecca Cornett.

15 Kyle Hauger.

16 Tracie Wallace.

17 Tiffany Linborg.

18 THE COURT: Ms. Wallace, you can go through the back
19 door.

20 THE CLERK: Amanda Stanley.

21 Rebekah Shidner.

22 Shelley Langton.

23 And Bridget Heberling.

24 THE COURT: All right. Before I excuse everyone
25 else, I need to swear in the jury.

Preliminary Instructions

1 Mary, will you please swear in our jury.

2 (The jury was duly sworn.)

3 THE CLERK: Thank you. Please be seated.

4 THE COURT: For everyone else who is summoned for
5 jury duty, you are all excused. I thank you very much for your
6 service to the United States District Court. We could not do
7 this process without you. So thank you all for coming in.

8 You are now the jury in this case. I am going to
9 take a few minutes to tell you about your duties as jurors and
10 to give you some preliminary instructions, and then we are
11 going to be done for the day. I'll talk to you about what's
12 going to go on in the remaining schedule.

13 But for now let me tell you that, although I'm giving
14 you preliminary instructions now, at the end of the trial I
15 will give you each a set of final written instructions that
16 will control your deliberations. So you'll get an overview
17 now. When we start up with the trial, you'll have notebooks.
18 Some of the things that I'm going to be reading to you, you may
19 say, "Oh, I'm not going to remember this." That's okay for
20 now, because at the end of the trial you will have a set of
21 written instructions that will be largely what I'm saying now,
22 but also a little bit more detail on some of these things.

23 But you should not take from these preliminary
24 instructions, or, frankly, from anything I may say or do during
25 the trial that I have an opinion regarding the evidence or what

Preliminary Instructions

1 should be your verdict. That is entirely up to you. When you
2 deliberate at the end of the trial, it will be your duty to
3 weigh and evaluate all of the evidence received in this trial
4 and in that process, to decide the facts. To the facts, as you
5 find them, you will apply the law as I give it to you. You
6 will recall that you have taken an oath to do so.

7 In following my instructions, you must follow all of
8 them and not single out some and ignore others. They are all
9 important. You must decide the case solely on the evidence and
10 the law before you.

11 You must not be influenced by any personal likes or
12 dislikes, opinions, prejudices, sympathy, or biases. When you
13 go into the jury room to deliberate at the end of the trial,
14 you will be asked to decide the case, but you will not only
15 have to vote yes or no on certain jury questions, in order to
16 do your duty as a juror, you'll have to explain to your fellow
17 jurors what evidence you believe supports your decision to vote
18 in a certain way. I tell you this now because research has
19 shown that jurors who understand that they will be accountable
20 to their fellow jurors for their vote pay more attention to the
21 evidence and are more engaged in jury deliberation. Our system
22 wants you to pay attention and to fully engage in jury
23 deliberation because jurors who do these things help make sure
24 that the trial reaches a just result. Thus, good jurors pay
25 attention and participate with their fellow jurors during

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1 deliberation.

2 This lawsuit is a civil case. That includes both an
3 individual claim and a class action claim under the Telephone
4 Consumer Protection Act, which is sometimes referred to as the
5 TCPA. The TCPA is a federal law that, among other things,
6 makes it unlawful for any person or entity to make a
7 telemarketing call to a mobile or cellular number or to a
8 residential telephone line or a residential landline when that
9 call uses an artificial or prerecorded voice to deliver or play
10 a message, unless the person or entity making the call has the
11 prior express consent of the party being called.

12 Now, the named plaintiff in this case is
13 Ms. Lori Wakefield. In this case Ms. Wakefield asserts one
14 claim for herself -- that's Count 1; and a separate claim on
15 behalf of a class of similarly situated individuals; that is
16 Count 2.

17 Ms. Wakefield alleges that the defendant in this
18 lawsuit, ViSalus, Incorporated, or ViSalus, Inc. -- and I'll
19 probably just refer to it as ViSalus -- violated the TCPA by
20 making one or more telemarketing calls to mobile or cellular
21 telephones or residential telephone lines or residential
22 landlines of class members and in making these calls ViSalus
23 used an artificial or prerecorded voice to play messages
24 without having the prior express written consent of the party

25 A class action is the procedure that allows the

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1 filing of one lawsuit by a representative or sometimes by a
2 small number of representatives on behalf of a group of
3 plaintiffs that have similar claims. This procedure is
4 intended to avoid duplication of effort or expense from
5 multiple lawsuits asserting the same claim by many people in
6 different locations.

7 Ms. Wakefield is the representative of the class in
8 this case. The plaintiff class is comprised of all individuals
9 in the United States who received a telephone call made by or
10 on behalf of ViSalus promoting ViSalus's products or services
11 where such call featured an artificial or prerecorded voice and
12 where neither ViSalus nor its agents had any current record of
13 prior express written consent to place such a call at the time
14 such call was made.

15 You should not hold the physical absence of any class
16 member from trial against plaintiff or any class member, and
17 you should not think that it reflects a lack of concern or
18 interest by any class member in the outcome of this litigation.
19 Also, the fact that this case is proceeding as a class action
20 does not mean that any decision has been made about the merits
21 of the case. You must make that decision.

22 Also, your verdict here will be binding on all class
23 members. At the end of this trial you will be asked certain
24 questions. For Count 1, which is Ms. Wakefield's individual
25 claim, you will be asked to decide the following questions:

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1 Did the defendant, ViSalus, make one or more
2 telemarketing calls to Ms. Wakefield? If so, did any such call
3 or calls use an artificial or prerecorded voice? If so, were
4 any such call or calls made to Ms. Wakefield's residential
5 telephone line or residential landline?

6 For each of these questions the burden is of proof is
7 on the plaintiff, Ms. Wakefield, and Ms. Wakefield, the
8 plaintiff, must prove her case by what the law calls the
9 preponderance of the evidence, which I will explain to you in a
10 few minutes.

11 If you find that Ms. Wakefield has proven each of
12 these three elements of her individual claim by a preponderance
13 of the evidence, you will then be asked to answer some
14 questions about the number of calls that Ms. Wakefield has
15 proven by a preponderance of evidence ViSalus made to her.

16 Now, for Count 2, which is the class claim, you'll be
17 asked to decide the following questions:

18 Did the defendant, ViSalus, make one or more
19 telemarketing calls to one or more members of the class other
20 than Ms. Wakefield?

21 2. If so, did any such call or calls use an
22 artificial or prerecorded voice?

23 And 3, if so, were any such call or calls made either
24 to a class member's -- other than Ms. Wakefield -- mobile or
25 cellular telephone or to that class member's residential

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1 telephone line or residential landline? And I'm using
2 "residential telephone line" and "residential landline"
3 interchangeably.

4 Now, for each of these class questions, the burden of
5 proof is also on the plaintiff as the class representative.
6 She must prove her case on behalf of the class by a
7 preponderance of the evidence. If you find that Ms. Wakefield,
8 as the class representative, has proven each of these three
9 elements of the class claim by a preponderance of the evidence,
10 you'll then be asked a number of questions regarding the number
11 of calls that she has proven by a preponderance of the evidence
12 ViSalus made to the members of the class other than
13 Ms. Wakefield.

14 The prohibitions of the TCPA, the Telephone Consumer
15 Protection Act, apply to both mobile cellular telephones,
16 regardless of whether they are business telephone numbers and
17 to residential telephone lines, also known as residential
18 telephone landlines. The TCPA does not, however, apply to any
19 call made to a business telephone line or a business telephone
20 landline. So it does apply to a cell phone, regardless of
21 whether it is business or residential. It also applies to
22 residential landlines. It does not apply to business
23 landlines.

24 Now, the parties have agreed or stipulated --
25 "agreed" and "stipulated" mean the same thing -- that

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1 Ms. Wakefield's telephone number was a landline telephone and
2 not a mobile or cellular phone. The parties disagree, however,
3 over whether Ms. Wakefield's landline telephone was a
4 residential landline telephone or a business landline
5 telephone. You must decide the issue based on the evidence
6 presented at trial and the law that I will provide to you.

7 In deciding this issue, you must give the word
8 "residential" its usual and ordinary meaning. You may consider
9 whether Ms. Wakefield's telephone number was registered as a
10 residential number or registered as a business number. You may
11 also consider whether that number was publicized or held out to
12 the general public as a business telephone number even if it
13 was registered as a residential number. The fact that a
14 landline telephone is used for some business calls does not
15 necessarily make it a business telephone landline, so long as
16 it is used primarily as a residential telephone.

17 The term "telemarketing call" means the making or
18 initiation of a telephone call or message for the purpose of
19 encouraging the purchase of or investment in property, goods,
20 or services to any person. In determining whether a call is a
21 telemarketing call, you should consider whether the purpose of
22 the call was to encourage the purchase of or investment in
23 property, goods, or services.

24 To be liable under the artificial or prerecorded
25 voice prohibition of the TCPA, a person must prove that a

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1 defendant made a call and either used an artificial or
2 prerecorded voice during that call or used an artificial or
3 prerecorded voice to play a message during that call. A call
4 uses an artificial or prerecorded voice if during a call the
5 prerecorded or artificial voice actually begins to --
6 quote/unquote -- speak or begins to play a message. If a
7 defendant made a call intending to use an artificial or
8 prerecorded voice, but that voice never actually --
9 quote/unquote -- spoke or the message never actually played,
10 then that is not a violation of the TCPA.

11 The TCPA prohibits making telephone calls to
12 residential telephone lines -- residential landlines or to
13 mobile or cellular telephones using an artificial or
14 prerecorded voice to deliver a message without the prior
15 express written consent of the party being called.

16 "Prior express written consent" means a signed
17 written agreement that clearly authorizes the caller to place
18 telemarketing calls using an artificial or prerecorded voice.
19 ViSalus does not contend that it had the prior express written
20 consent to call Ms. Wakefield or any other class member.

21 If you find that ViSalus violated the TCPA by making
22 one or more telemarketing calls that used an artificial or
23 prerecorded voice to one or more residential telephone lines or
24 mobile or cellular telephones for any class member, including
25 Ms. Wakefield, you will be asked to determine -- there are a

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1 number of questions -- you will be asked to determine the
2 number of times or the number of violations that ViSalus
3 committed or the number of times that ViSalus violated the
4 TCPA. There will be questions on the verdict form for you to
5 indicate your answers to these questions.

6 You must decide the case based on the evidence
7 presented at trial and not guess or speculate. For both
8 Count 1 and Count 2, Ms. Wakefield has the burden, as I've
9 said, of proving the number of TCPA violations as well as the
10 elements of the claims. She has the burden to prove the
11 elements of the violations and the number of TCPA violations by
12 a preponderance of the evidence.

13 Let me explain that. I've already said that the
14 plaintiff, Ms. Wakefield, has the burden of proving both her
15 individual claim and her class claim by what the law calls
16 preponderance of the evidence. When a party has the burden of
17 proving any claim by a preponderance of the evidence, it means
18 you must be persuaded by the evidence that the claim is more
19 probably true than not true.

20 You should base your decision on all of the evidence,
21 regardless of which party presented it. The evidence you are
22 to consider in deciding what the facts are consist of the sworn
23 testimony of any witness, and there will be both live testimony
24 and deposition testimony, as I'll explain in a few moments; the
25 exhibits that are received into evidence; any facts to which

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1 the lawyers on both sides have agreed, which are also called
2 stipulations; and any facts, if there are any, that I will
3 instruct you to accept as proven as true. There may not be
4 any. But if I do, that's part of the evidence too.

5 I mentioned that some of the evidence will be live,
6 by witnesses called up here. Other evidence will be presented
7 to you by what's called deposition testimony. A deposition is
8 the sworn testimony of a witness taken before trial. The
9 witness is placed under oath to tell the truth, just like the
10 witnesses who will be here live, and the lawyers for each party
11 may ask that witness questions, and the questions and answers
12 are recorded by a reporter and then a written transcript is
13 prepared.

14 In this trial I expect that excerpts from the
15 deposition transcript of several witnesses will be read to you.
16 Now, the person reading the questions may be one of the
17 lawyers. The person reading the answers will not be the real
18 witness. It will be a reader. But insofar as possible, you
19 should consider the deposition testimony presented to you in
20 court, instead of live testimony, in the same way as if the
21 witness had been present to testify. But because we won't have
22 the real witness, only a reader, do not place any significance
23 on the behavior or tone of voice of any person reading the
24 questions or reading the answers.

25 Now, in reaching your verdict, you may consider only

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1 the testimony and the exhibits received into evidence and any
2 stipulations. Certain things are not evidence, and you may not
3 consider them in deciding what the facts are. I will list them
4 for you:

5 Arguments and statements by the lawyers are not
6 evidence. The lawyers are not witnesses, and what they will
7 say in their opening statements -- and we will do opening
8 statements tomorrow morning. What they will say in their
9 opening statements, what they will say in their closing
10 arguments and at other times is intended to help you interpret
11 the evidence, but it is not evidence, what they say. And if
12 the facts as you remember them differ from the way the lawyers
13 describe them, your memory of them controls.

14 Also, questions and objections by lawyers are not
15 evidence. Attorneys do have a duty to their clients to object
16 when they believe a question is improper under the rules of
17 evidence. You should not be influenced by the objection or by
18 the Court's ruling -- by my ruling on any objection.

19 It is possible that the testimony may be excluded or
20 stricken, and I'll strike that testimony. I may instruct you
21 to disregard testimony. If I do, the testimony that has been
22 stricken or that I've instructed you to disregard, that's not
23 evidence and must not be considered by you in your
24 deliberations.

25 In addition, it is possible that I may limit some

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1 testimony or exhibits to a particular limited purpose. I may
2 allow it only for a limited purpose. If I do that, I'll
3 explain to you what's going on at the time. But if I give you
4 a limiting instruction, you must follow it.

5 Finally, anything that you may have seen or heard or
6 will see or will hear when the Court is not in session is not
7 evidence. You are to decide the case solely on the evidence
8 received at trial.

9 Evidence may be direct or circumstantial. Direct
10 evidence is direct proof of a fact, such as testimony by a
11 witness about what that witness personally saw or heard or did.
12 Circumstantial evidence is proof of one or more facts from
13 which you can find another fact, and you should consider both
14 kinds of evidence. The law makes no distinction between the
15 weight to be given to either direct or circumstantial evidence.
16 It is for you to decide how much weight to give to any
17 evidence.

18 Let me give you an example. If you wake up in the
19 morning and you look outside your window and you see that the
20 sidewalk is wet, you may find or conclude from that fact that
21 it rained at night. That would be an example of circumstantial
22 evidence. You are inferring that it rained by seeing the
23 wetness on the sidewalk.

24 However, other evidence may be presented, such as the
25 fact that someone in the middle of the night turned on a garden

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1 hose and sprayed the sidewalk. That may provide a different
2 explanation for the presence of water on the sidewalk.
3 Therefore, before you decide that a fact has been proved by
4 circumstantial evidence, you must consider all of the evidence,
5 in light of reason, experience, and common sense.

6 Now, there are rules of evidence that control what
7 can be received into evidence. When a lawyer on one side or
8 the other asks a question or offers an exhibit into evidence,
9 and a lawyer on the other side thinks that is not permitted by
10 the rules of evidence, that lawyer may object, say "objection."
11 If I overrule the objection -- basically if I say "overruled,"
12 that means the question may be answered or the exhibit may be
13 received. But if I sustain an objection, by saying
14 "sustained," then the question cannot be answered or the
15 exhibit cannot and will not be received. Whenever I sustain an
16 objection to a question, you must ignore the question and must
17 not guess what the answer might have been.

18 Sometimes, as I said, I may order stricken from the
19 record and that you disregard or ignore that evidence. That
20 means that when you are deciding the case, you must not
21 consider evidence that I instructed you to disregard.

22 Now, in deciding the facts in this case, really in
23 any case, a jury -- you -- may have to decide which testimony
24 to believe and which testimony not to believe. You may believe
25 everything a witness says, part of it, or none of it.

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1 Proof of a fact does not necessarily depend on how
2 many or the number of witnesses who testify about it. In
3 considering the testimony of any witness, you may take into
4 account the opportunity and ability of the witness to see and
5 hear and know the things testified to; the witness's memory,
6 the witness's manner while testify; the witness's interest in
7 the outcome of the case, if any; the witness's bias or
8 prejudice, if any; whether other evidence contradicted the
9 witness's testimony; the reasonableness of the witness's
10 testimony, in light of all of the evidence; and any other
11 factors that bear on believability. The weight of the evidence
12 as to a fact does not necessarily depend on the number of
13 witnesses who testify about it.

14 Let me now say a few words about your conduct as
15 jurors. First, keep an open mind throughout the trial. Do not
16 decide what the verdict should be until you and your fellow
17 jurors have completed your deliberations at the end of the
18 case.

19 Second, because you must decide this case based only
20 on the evidence received in the case and on my instructions on
21 the law that applies, you must not be exposed to any other
22 information about the case or the issues it involves during the
23 course of your jury duty.

24 Thus, until the end of the case or until I instruct
25 you otherwise, do not communicate with anyone in any way and do

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1 not let anyone else communicate with you in any way about the
2 merits of the case or anything to do with it.

3 Now, let me clarify one thing. You may very well
4 have to tell family members, employers, co-workers, and others
5 where are you going to be for the next couple of days,
6 including until Monday. That's fine. Tell them that you have
7 been selected as a juror in a trial. That is totally fine.

8 Tell them that the trial may be over by Friday, but
9 it might not be over until Monday. Feel free to tell them that
10 it might not be over until Monday, and you are going to be in
11 court, except for today, you are going to be in court from
12 9:00 to 5:00 on Thursday, Friday, and even Monday. You're
13 welcome to tell them that.

14 Do not tell them what the case is about. Do not even
15 tell them that it is a civil case versus a criminal case. Do
16 not tell them any of the names of the parties involved. Do not
17 even tell anyone even what the issues are involved. Don't
18 mention things like the TCPA. Don't tell anyone what the case
19 is about. Frankly, they may ask you, and here is what you are
20 welcome to tell them to do: Tell them that there is really
21 mean federal judge that has ordered you not to talk about the
22 case.

23 Let me tell you why. If you just happen to mention
24 what the case is about, you may get a response that brings in
25 things that you shouldn't be considering into your decision.

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1 They may say something to you -- whether it be about the
2 parties or about the issues or anything about the law that is
3 inappropriate for you to consider. So just simply say, "I'm
4 sorry. I can't talk about the case. All I can tell you is I'm
5 going to be a juror in a case. I can't tell you a thing about
6 it until it is over."

7 If you want to add, "When it is over, I will tell you
8 everything," if you want to. When the case is over, it is your
9 choice. You can tell anybody anything you want, or nothing.
10 But until you have been discharged at the end of this case,
11 don't tell anybody anything and feel free to say that the judge
12 has ordered it.

13 Also, that means don't discuss the case in person, in
14 writing, by phone, electronic means, by email, text messaging,
15 Internet chat room, blog, website, YouTube, or any other
16 feature. If you want to blog about this case when this case is
17 over, you do so to your heart's content. You do whatever you
18 want to. You don't have to. But not while the case is going
19 on. We don't want anyone seeing your views and your thoughts
20 while the case is going on, and we don't want anybody
21 responding and telling you any information about these issues.

22 This also, by the way, applies to communicating with
23 your fellow jurors. You can get to know one another socially
24 if you want; most jurors do. But don't start talking about the
25 merits of the case. Don't start talking about the issues in

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1 the case until it is finally in your hands for deliberation.

2 By the way, if anyone does start telling you anything
3 about the case, even if you find out that one of your co-jurors
4 has told you something that they've learned about this case
5 from the outside, I need to know that. So tell me as soon as
6 possible; tell Mary.

7 Some of you may have cell phones or smartphones,
8 iPhones, laptops, notebooks, netbooks, other portable computers
9 or other tools of technology that allow you to access the
10 Internet and communicate with others. If you need to do that
11 for your non-related court purposes, not while in court
12 listening to testimony, that's fine. I'm not going to disrupt
13 your life more than we absolutely have to, but say absolutely
14 nothing about this trial or any of the issues. Don't do any
15 research; don't look anything up.

16 All right. Enough about that.

17 By the way, if you do pass any of the lawyers or the
18 parties or a witness in the hallway or in the elevator or in a
19 restroom, I'm instructing them not to communicate with you.
20 I'm instructing you not to communicate with them. So nobody is
21 going to be rude to the other if you just like walk right by
22 and don't even acknowledge them. Don't say hello; don't say
23 good morning. I'm telling them the same thing. That's not
24 being rude. That's keeping everything separated.

25 All right. Because you will receive all of the

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1 evidence and legal instructions that you properly may consider
2 to return a verdict, do not read, watch, or listen to any news
3 or media accounts or commentary about this case or anything to
4 do with it. Do not do any research, such as consulting
5 dictionaries, searching the Internet, or using any other
6 reference materials online or off line. Don't make any
7 investigation in any way about this case -- about the facts or
8 the law -- nothing -- or the parties. Nothing.

9 The law requires these restrictions to ensure that
10 the parties receive a fair trial based on the same evidence
11 that each party has had an opportunity to address and respond
12 to. A juror who violates these restrictions jeopardizes the
13 fairness of these proceedings, a mistrial could result, and
14 that might require the entire trial process would have to start
15 over from the beginning.

16 As I mentioned, if any juror is exposed to any
17 outside information, please notify the Court immediately. I
18 don't expect there will be news media or commentary about this
19 case while the trial is going on. If there is, you must ignore
20 it. If you happen to hear something on the radio or something
21 on the television or a newspaper that has anything to do with
22 this case or these issues, ignore it. Walk to another room.
23 If you are by yourself, you can turn it off. If you are with
24 somebody else, just walk to another room, or just don't listen
25 to it. Don't comment on it. This case must be decided by you

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1 solely and exclusively on the evidence received in the case and
2 my instructions on the law

3 Now, during deliberations you will have to make your
4 decision based on what you recall of the evidence. You will
5 not have a transcript of the trial. So I urge you to pay
6 attention to the testimony as it is given. By the way, if at
7 any time you cannot hear the testimony or see the evidence, or
8 if you can't hear what some witness is making a statement that
9 they are making to you, just raise your hand and tell me what's
10 going on, and we will correct the problem.

11 You may, if you wish, take notes. Tomorrow morning
12 Mary will pass out notebooks and pens and pencils to you, if
13 you want. If you take notes, please keep them to yourself
14 until you and your fellow jurors go to the jury room to decide
15 the case. Do not let note-taking distract you. When you leave
16 for the day, your notes should be left in the jury room.
17 No one will read them. At the end of the trial you will be
18 welcome to take home your notes, or you may leave them here, if
19 you want, and we will shred them for you, whatever you want.
20 But while the trial is going on, just leave them in the jury
21 room.

22 Whether or not you take notes, you should rely on
23 your memory of the evidence. Notes are only to assist your
24 memory, and you should not be overly influenced by your notes
25 or those of your fellow jurors. By the way, I do allow you to

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1 ask questions in writing, if you really want to. I would like
2 to keep it to a minimum so we can keep things moving. But if
3 there is something that you really think you must know, feel
4 free to write it out on your notebook, sign your name to it,
5 give it to Mary, she will give it to me, and I'll discuss it
6 with the lawyers. If we can answer it -- if we can get the
7 answer, we will. If we can't, I'll explain that to you.

8 From time to time during the trial it may become
9 necessary for me to talk with the attorneys outside the hearing
10 of the jury, either by having a conference just to the side of
11 the bench with the jury still in the courtroom, or sometimes by
12 me asking you to go to the jury room. I really do try to keep
13 that to a minimum so we can respect your time and make the
14 maximum efficient use of your time. But if I do ask you to go
15 to the jury room, please understand we are working.

16 The purpose of those conferences is not to keep
17 relevant information from you, but simply to decide how certain
18 evidence must be treated under the rules of evidence and to
19 avoid confusion and error. I will do what I can to keep the
20 number and length of those conferences to a minimum, and,
21 frankly, even if an attorney asks for a conference, I may not
22 grant it. I may tell that attorney to move on to another topic
23 and save our discussion for our next break, and so I'll work
24 with the attorneys during the break so as not to interfere with
25 your time or really to make maximum, efficient use of your

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1 time. Please do not consider my granting or denying a request
2 for a conference as any indication of my opinion of the case or
3 what your verdict should be. As I said at the beginning,
4 that's your decision.

5 Now, the trial will proceed in the following way:
6 Tomorrow morning each side will make an opening statement. An
7 opening statement is not evidence. It is simply an outline to
8 help you understand what the party expects the evidence at
9 trial will show.

10 After the opening statements, the plaintiff's lawyers
11 will call a witness to testify either in person or by reading
12 from a deposition. When a person is called, the witness will
13 be questioned first by the plaintiff's counsel under what is
14 called direct examination. After the direct examination of a
15 witness is completed, counsel for the defendant, the other
16 side, may then question that witness. That's
17 cross-examination. When cross-examination by a witness is
18 done, I'll allow the plaintiff's lawyer to ask some additional
19 questions. That's called redirect examination. Then I'll
20 allow the defense lawyer, the other side, to ask some
21 additional questions. That's called recross.

22 By the way, if a deposition excerpt is read to you,
23 the plaintiff may read to you some questions and answers,
24 followed by the defendant reading to you some questions and
25 answers, and I think we will keep the same reader there for

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1 continuity.

2 All right. After the plaintiff has presented all her
3 witnesses, the defendant will be allowed to call some
4 witnesses, if the defendant wants to do so. After the
5 defendant calls a witness, that person will be examined and
6 cross-examined in the same manner that I've just described,
7 although then the defendant begins the questions, and the
8 plaintiff does the cross-examination.

9 You should keep an open mind throughout the entire
10 trial. After all of the evidence has been presented, I'll give
11 each of you a written copy of the final jury instructions on
12 the law that applies. I will give each of you a written copy
13 of the verdict form, a form that has the questions that you
14 will need to answer. Then after that, you will go to the jury
15 room to deliberate on your verdict, to discuss the case with
16 each other, and to answer the questions that will be presented
17 to you on the verdict form.

18 In a few moments I'm going to excuse you to go back
19 to the jury room with Mary. Then you will be excused for the
20 rest of the day. Please be back in the jury room well before
21 9:00 a.m. I would like to start in court at 9:00 a.m. sharp
22 tomorrow morning. If you want to get here early, ask Mary how
23 early she gets in. She will show you how to get access to the
24 building. If you want to get in here plenty early and sit and
25 relax, that's fine. You can do it in the jury room. Please

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1 ensure that you are ready so we can bring all eight of you into
2 the courtroom at 9:00 a.m. tomorrow.

3 Mary is going to pass out in the jury room some juror
4 buttons. That serves a couple of purposes. No. 1, when you
5 are in the building, it tells everybody in the building,
6 including potential witnesses in this case, that you are a
7 juror. Therefore, stay away from the person. Don't talk about
8 a pending case, a pending trial when a juror is nearby.

9 Also, sometimes there is a line in security at the
10 front of the building; sometimes there is not. When you wear
11 your juror button, and I recommend you put it on maybe about a
12 block away from the courthouse, as you are walking toward the
13 courthouse. At least have it on in the courthouse.

14 If you put it on about a block or so when you are
15 walking into the building, if there is a line at the security
16 desk on the first floor, you are welcome to go to the front of
17 the line. It is not rude. It is something that we allow all
18 of our jurors to do. Just tell the marshals that are operating
19 security down there that you are a juror in Judge Simon's
20 courtroom, and he said you could come to the front of the line
21 if you are wearing your juror button. It doesn't apply to
22 lawyers. It applies to jurors. So you will have that.

23 Also, you are going to be in a secure area back there
24 in the jury room. It is not like this public area. So if you
25 want to leave your property back there during trial, you go

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1 ahead and do that. Mary is going to give you key cards and
2 show you how to work them so that you can come and go back into
3 that secured area. Those are for your use during the trial.
4 No. 1, do not lose them. No. 2, please return them at the end
5 of the trial. And No. 3, don't give them to anybody else.

6 All right. Anything else I should cover at this
7 time?

8 Anything else from plaintiff I should cover with our
9 jurors at this time?

10 MR. DOVEL: Nothing from the plaintiff, Your Honor.

11 THE COURT: From defendant?

12 MR. O'NEAL: Nothing from the defendant, Judge.

13 THE COURT: All right. Thank you all so much for
14 being here. We will start at 9:00 a.m. sharp tomorrow with
15 opening statements.

16 (Open court; jury not present:)

17 THE COURT: May I ask somebody to close the back
18 doors, please. Both sets.

19 We are here without our jury. One of the things that
20 I really need to know is what's the data set on which 36C is
21 based and when was that made available to the defendant. I
22 also need a better feel of how much time it will take for the
23 defendant to check the numbers that were just made available on
24 36C against that data set.

25 So probably the best way to proceed is to call up

Preliminary Instructions

1 Mr. Davis here and let defendant ask him some questions, if you
2 want to do that.

3 Does anybody want to proceed in any other fashion?

4 MR. DOVEL: I think that makes sense.

5 MR. O'NEAL: Judge, one thing. We might be able to
6 learn some of this stuff just by stipulation without asking the
7 witness some questions.

8 THE COURT: All right. You're welcome to ask
9 counsel. If counsel is willing to give you an answer on the
10 record, that will be fine.

11 MR. O'NEAL: Is it true --

12 THE COURT: Sit down and speak into the microphone.

13 MR. O'NEAL: Sure.

14 Was the phone list that was used to distinguish
15 between mobile and landline telephones provided to us last
16 night around 10:00, 10:30?

17 MR. DOVEL: Yes, that's right.

18 MR. O'NEAL: Good enough for us right now.

19 THE COURT: And was that a subset of a larger list
20 that was provided earlier? What is it?

21 MR. DOVEL: Well, Your Honor, what we did was, it was
22 all from the defendant's contact list that we started with
23 months ago. What we did last night was go to a public database
24 to see which of those numbers were mobile numbers. We provided
25 that list to defendants last night. That's what's we provided.

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1 So the data itself is the data that we obtained from defendants
2 months ago.

3 THE COURT: Which public database did you consult
4 last night?

5 MR. DOVEL: It is called SearchBug.

6 THE COURT: That's to identify whether a telephone
7 number is mobile or not mobile?

8 MR. DOVEL: That's right, Your Honor.

9 THE COURT: All right. If the defendant wants to ask
10 questions of Mr. Davis, we will get Mr. Davis up here. I
11 assume you do.

12 MR. FOSTER: Yes. Of course, Your Honor.

13 THE COURT: Mr. Davis, since Mary is not here, I will
14 do it the old-fashioned way.

15 (The witness was duly sworn.)

16 THE COURT: Take a seat in the witness stand and for
17 the record give us your full name whenever you are ready.

18 THE WITNESS: My full name is Shawn Davis.

19 THE COURT: Mr. Foster, you may examine.

20 DIRECT EXAMINATION

21 BY MR. FOSTER:

22 Q Good afternoon. My name is Zac Foster. I am one of the
23 attorneys for ViSalus. I am going to ask you a few questions
24 about the exhibits we got --

25 THE COURT: Mr. Foster, I know we are on a little bit

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1 of a time crunch, but speak slowly. I want a good clean
2 record.

3 MR. FOSTER: Thank you, Your Honor.

4 BY MR. FOSTER:

5 Q I apologize if I ask some basic questions, but I only got
6 this document last night, and I would like to know what I'm
7 looking at. Specifically I'm looking at the Excel spreadsheet
8 labeled Exhibit 64.

9 Are you aware of that spreadsheet?

10 A Is that the SearchBug results?

11 Q I don't know. I'll describe it for you. Column A says
12 Phone Number; column B says Line Type; column C says OCN;
13 column D says Carrier; column E says Location; column F says
14 State; column G says Time Zone. There are about 850,000
15 horizontal lines included in that data set. Does that sound
16 like -- does that -- I forgot -- what's the name of the company
17 you use to search?

18 A SearchBug.

19 Q Just to clarify, Mr. Davis, you work for Edelson, PC; is
20 that correct?

21 A Correct.

22 Q You don't work for SearchBug?

23 A Correct.

24 Q From what I understand, and I have never taken your
25 deposition, so please correct me if I'm wrong. You are an IT

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1 specialist for Edelson, correct?

2 A Correct.

3 Q What are your job duties at Edelson?

4 A At Edelson I'm director of digital forensics. So I
5 essentially lead a technical team that ends up consulting on
6 the cases. We test various products, look at mobile apps,
7 websites for security and privacy issues.

8 Q You wouldn't describe yourself as a telephone specialist?

9 A Repeat that?

10 Q You wouldn't describe yourself as a telephone specialist,
11 would you?

12 A I've had familiarity with these types of cases. Could you
13 rephrase that?

14 Q You don't work for a phone company?

15 A Correct.

16 Q You don't work for Experian?

17 A Correct.

18 Q You don't work for any other database company, do you?

19 A Correct.

20 Q You don't work for the company that spits out this data
21 that I'm looking at in Exhibit 64, do you?

22 A I do not.

23 Q So I think I understand what you did. You took the KCC
24 class list; is that correct?

25 A For this one, I didn't rely on the KCC class list. It

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1 came directly from all of the phone calls from the
2 spreadsheets.

3 Q You took all of the phone calls from the spreadsheets and
4 plugged them into a database, correct?

5 A Correct.

6 Q And it spits out this Excel spreadsheet?

7 A Yes. Just to clarify -- just to make it a little simpler,
8 instead of taking all of the calls, I de-duplicated the
9 numbers, so I took the unique numbers and uploaded them to
10 SearchBug.

11 Q You de-duped the underlying database -- that's the
12 underlying database you provided to us with 4.15 million
13 telephone numbers?

14 A I'm not sure which one you received.

15 Q Are there different versions of that database that you
16 created? For instance, I've been getting multiple summaries.
17 Every time I get a summary, the final number changes; the total
18 number of calls. Is that -- have you been running -- have you
19 been creating subsequent databases to create the summaries?

20 A Correct.

21 Q And the only summary I have is the one I received back in
22 January of this year with the 4.15 million telephone numbers
23 listed. Are there additional databases that have been created
24 and that were relied on for these summaries?

25 A Correct.

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1 Q Okay. If I only have the one in January, I don't have
2 those; is that correct?

3 A That's correct.

4 Q And so when you put in the de-duped numbers from databases
5 I don't have into a database you don't work for, it spits out
6 the Excel spreadsheet; is that correct?

7 A I did --

8 Q Okay. Let's run through the Excel spreadsheet. Column A,
9 Phone Number. What are those?

10 A So that is essentially the unique phone numbers that were
11 uploaded.

12 Q What is Line Type?

13 A Line Type is the type of phone number. It is either a
14 cellular phone number, a landline telephone, a toll-free
15 number, or an unknown number.

16 Q What's an unknown number?

17 A "Unknown" would mean that SearchBug was not able to get
18 the results from the carrier.

19 Q Why wasn't SearchBug able to get the results from the
20 carrier?

21 A I'm not sure.

22 Q Because you don't work for SearchBug?

23 A Correct.

24 THE COURT: Mr. Foster, you will have to speak more
25 slowly, if you want an accurate record, which I do.

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1 MR. FOSTER: Thank you, Your Honor.

2 BY MR. FOSTER:

3 Q What does "OCN" stand for in column C?

4 A I believe it stands for Original Company Number. I may be
5 mistaken. I know what it stands for in terms of it's a unique
6 value that identifies the carrier or a telecommunications
7 company.

8 Q Do you know what it stands for because you read it
9 somewhere else in a database's explanation? How do you know
10 that?

11 A I have looked it up in the past.

12 Q And then what's the time zone?

13 A Time zone would be the time zone of the number.

14 Q Okay. So if I understand, this database told you whether
15 it was a cell phone, a landline, toll-free or database or
16 didn't know what it was, correct?

17 A Correct.

18 Q As of what date?

19 A Can you rephrase the question?

20 Q Is it a cell phone as of when you ran it, or did you go
21 back and say this was the cell phone back in 2015?

22 A It was as of when I ran it. So they've essentially pulled
23 that data for whatever month when you ran it.

24 Q So that would be March 2019?

25 A Correct.

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1 Q And you understand that this class deals with calls
2 from -- being generous -- 2013 to the end of 2015?

3 A Yes.

4 Q So what is the status of the number -- either a landline
5 or a cell phone -- help us at all in this case today?

6 A So -- can you rephrase that?

7 Q One issue in this case is whether a number is a cell phone
8 or a landline telephone. You have given us a list of whether a
9 number is a cell phone or a landline telephone as of last
10 month. You would agree with me that numbers change from cell
11 phone to landline telephone, would you not?

12 A They do occasionally.

13 Q Numbers are reassigned. Some numbers become active; they
14 become inactive; is that correct?

15 A That would be correct.

16 Q So if the numbers have potentially changed, what have you
17 done to ensure that this list has anything to do with the class
18 calls?

19 A I have not been able to find any sort of database that
20 goes back to that point in time.

21 Q Okay. Correct me if I'm wrong, when did you do this
22 analysis? When did you do this analysis?

23 A Yesterday.

24 THE COURT: Let me interrupt one second. Why didn't
25 you do it a month ago?

S. Davis - Exam by the Court

1 THE WITNESS: I was just asked to do it recently
2 after the pretrial conference.

3 THE COURT: You may proceed.

4 MR. FOSTER: Your Honor, I could continue to poke
5 holes in this, but I think the record is clear at this point.
6 The document is hearsay. It is highly prejudicial. It was
7 dumped on us last night. I've had only a few hours. I have
8 been scrambling to put it together and to understand the bases
9 of the spreadsheet. He didn't create. It was dropped on us at
10 last minute. It is hearsay. It should not come in. The
11 summary, 36C, if I understand correctly, is based off of
12 Exhibit 64, which is hearsay. And you can't have a summary
13 based off of inadmissible evidence.

14 THE COURT: By the way, I don't think I have been
15 given a copy of 64. Have I been?

16 MR. DOVEL: Your Honor, that's the electronic one
17 that we will have to provide electronically. It is an
18 electronic spreadsheet.

19 MR. FOSTER: I have a copy right here on my laptop,
20 Your Honor --

21 THE COURT: No. I just wanted to make sure I didn't
22 lose something that has not given to me.

23 Here is I would like to do: I would to let you ask
24 whatever remaining questions you have, if you want to, of
25 Mr. Davis. If plaintiff wants to ask him any questions now,

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1 they are welcome to.

2 What I understand as the motion on the table is to
3 exclude the summary, 36C, and to exclude what has been
4 identified as the electronic spreadsheet, 64, correct?

5 MR. FOSTER: Your Honor, I would also ask that we
6 exclude 36A and 36B, for the sole purpose, again, those were
7 produced -- I think 36A was produced Sunday, and then 36B was
8 produced Tuesday morning. I think if they are going to use a
9 summary, and I intend to cross Mr. Davis on the original
10 summary they marked in their exhibit book. I'm more than happy
11 to go over that, Your Honor, but I don't think they can
12 continue to change their summary, and I'll tell you why,
13 Your Honor.

14 As Mr. Davis said, those final numbers in 36A and 36B
15 have been changing. They have been changing because they are
16 based on different underlying databases. Mr. Davis and the
17 Edelson firm provided us the original underlying database,
18 which I have been doing for analysis for his cross. That's the
19 only database I have, and that's all they've turned over.

20 THE COURT: And when did you get that database?

21 MR. FOSTER: Back in January 2019, Your Honor, as
22 part of the pretrial disclosures. There are additional
23 databases on which Exhibits 36A and 36B have been created. And
24 I don't have those, and I can't cross.

25 THE COURT: Hold on. The database that you got that

S. Davis - Exam by the Court

1 underlies 36, you received in January 2019, correct?

2 MR. FOSTER: Correct.

3 THE COURT: When did you receive 36A and 36B?

4 MR. FOSTER: I received 36A, I believe, Sunday,
5 Your Honor.

6 THE COURT: Okay. And 36B?

7 MR. FOSTER: Tuesday morning.

8 THE COURT: And when did you receive the databases on
9 which 36A and B were based?

10 MR. FOSTER: I never received them, Your Honor.
11 That's why I was questioning Mr. Davis on this.

12 THE COURT: Did you ask Mr. Davis on what databases
13 36A and B were prepared?

14 MR. FOSTER: I believe so. I believe Mr. Davis
15 explained to me, and I will let Mr. Davis explain again, that
16 the summary, 36A, has less numbers --

17 BY MR. FOSTER:

18 Q The total number of numbers called in 36A and B are
19 different than the original 36; is that correct?

20 A That's correct.

21 Q And that's because it is a summary of the database that
22 you used; is that correct? You used a program to count the
23 unique entries in that database and spit out a final number; is
24 that correct?

25 A Can you rephrase that?

S. Davis - Exam by the Court

1 THE COURT: Let me ask this, Mr. Davis: What's the
2 difference between Exhibit 36 that was provided to the Court
3 and to defendants a number of weeks ago and 36A and B? What's
4 the difference between 36, on the one hand, and 36A? Let's
5 start with that.

6 What's the difference?

7 THE WITNESS: Sure. So 36 was based off of all the
8 defendant's spreadsheets by basically turning those into a
9 master. So then to spit out 36, I ran all of the calls against
10 the KCC class list; only the numbers that were either in the
11 phone number one or phone number two column. So that's what
12 that was.

13 So then with 36A, that's where I ended up running all
14 of the calls against KCC phone number one, and then I ended up
15 removing business names.

16 THE COURT: 36A is basically 36 minus business names?

17 THE WITNESS: And minus phone two.

18 THE COURT: What?

19 THE WITNESS: So let me explain that a little bit.
20 So the defendant's records had a phone number one column and
21 then they had a phone number two column. When I did the
22 analysis for 36, I essentially matched against both of those,
23 but then later on I realized -- well, I asked counsel if there
24 was any evidence that the defendant had called both of those
25 numbers since we are kind of considering a row to be a call.

S. Davis - Exam by the Court

1 And since I didn't hear anything to indicate that, that's why
2 on 36A I only matched against phone number one.

3 THE COURT: What's 36B? How is that different from
4 either 36 or 36A?

5 THE WITNESS: So 36B, I didn't match against the KCC
6 class list at all. So what I essentially did was I had all of
7 the calls. I had my master list of all of the calls. Then I
8 used a program which essentially checked all of the phone
9 numbers to see if they were U.S., if they were invalid, if they
10 were from another country.

11 So what I did was I made it so that only the U.S.
12 numbers remained. I got rid of other country numbers. I got
13 rid of invalid numbers, and it checked those by the area code
14 and the prefix. Then I again removed businesses by first name
15 and last name.

16 THE COURT: What was the name of the program that you
17 used for 36B to narrow it down to only U.S. numbers?

18 THE WITNESS: It was a program based off of a Google
19 service.

20 THE COURT: How should I refer to it as? What do you
21 refer to it as?

22 THE WITNESS: The Google checker; Google phone number
23 parser may be more technical.

24 THE COURT: Has that program that you used to create
25 36B been provided to defendant?

S. Davis - Exam by the Court

1 THE WITNESS: It has not.

2 THE COURT: Do you know why not?

3 THE WITNESS: I'm not aware.

4 THE COURT: Now, 36A, which is the original 36
5 matched against the KCC class list and taking out business
6 names and phone number two, why wasn't that done at the time
7 that 36 was created?

8 THE WITNESS: I was told later that the businesses
9 could be an issue, so that's why that was created later.

10 THE COURT: When were you told that?

11 THE WITNESS: It might have been the 6th.

12 THE COURT: Of April?

13 THE WITNESS: Uh-huh.

14 THE COURT: That's a yes?

15 THE WITNESS: Yes.

16 THE COURT: All right. What I would like to do is
17 give both sides an opportunity to make written argument. We
18 have a motion to exclude by the defendant 36A, B and C; am I
19 correct?

20 MR. FOSTER: That's correct, Your Honor.

21 THE COURT: I would like to see by 9:00 p.m.
22 tonight -- you're welcome to file any further written argument.
23 You don't have to, by the way. You're welcome to. 36A, B, and
24 C, why those should be excluded. Give me specifics and
25 preferably some case law and/or analysis under Rule 1006.

1 On second thought, I am going to make it earlier.
2 Make it 7:00 p.m. Plaintiff can respond by midnight on that.
3 I will read everything, and then I think we should get back and
4 let you have any final oral argument, and I will give you my
5 ruling on 36A, B, and C tomorrow morning.

6 MR. DOVEL: While we have him here, I would like to
7 ask a couple of questions to clarify a couple of things.

8 THE COURT: That's fine. I'll give you my ruling in
9 the morning, and I think probably we should get together at
10 8:15 tomorrow. Okay. I want to make sure we have time for
11 this. I will let you ask questions of Mr. Davis in a few
12 moments, but I'll share with you what my concerns are. You are
13 welcome to argue and respond any way you want.

14 Under Rule 1006, the issues on summary exhibits
15 primarily relate to a number of factors, including are the
16 underlying documents that underlie those summaries admissible?

17 Now, I'm going to assume that any database that came
18 from defendant is a business record and is admissible. But to
19 the extent that there is other programs that play a role in
20 deciding what ends up in this summary, the parties can address
21 and talk to you about the significance of that.

22 But if all of the documents that support a summary
23 are admissible, then the question primarily comes to: Was
24 adequate notice given to the other side -- this is a summary --
25 so that they can check it? That's what I'm primarily hearing

1 from Mr. Foster as the argument of defendant; that they didn't
2 have adequate time to check this, in addition to your argument
3 about the underlying admissibility.

4 Some courts -- and courts are split on the question
5 of, if there are inaccuracies in the summary, does that affect
6 their admissibility under 1006? Some courts say yes; other
7 courts basically say, "No, as long as the underlying
8 documents" -- by the way, there is a threshold assumption that
9 the underlying records are voluminous. That's satisfied here.
10 I don't need argument on that. These are voluminous records.

11 If there is voluminous records and all of the records
12 have been produced to the other side and are adequately
13 presented --

14 Mary, you can tell Paul he can come in if he wants.

15 If all of the records have been adequately presented
16 to the other side in sufficient time for them to do their
17 summary, then any challenges to the accuracy of a Rule 1006
18 summary, I think, generally is for the jury to decide. Maybe
19 if the summary is so inaccurate, it should be excluded under
20 403, but that's a different issue. Generally I think it is for
21 a jury question, the accuracy of a summary.

22 The primary concern here is, are these summaries
23 generated using documents that would otherwise not be
24 admissible? And more significantly, were they generated in
25 such a fashion that would not fairly give the defendant time to

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1 determine whether they are accurate or not and to prepare for
2 cross-examination? There have been cases where courts have
3 said giving voluminous records to the other side three months
4 in advance? More than enough time. 30 days? More than enough
5 time, even if it is voluminous.

6 Here, we have 36A, B, and C that have been provided
7 to the defendant essentially three days before trial, one day
8 before trial; frankly, the night before trial. So that's what
9 I think you all should focus your arguments on. I will take
10 the defendant's brief filed electronically filed by 7:00 p.m.
11 tonight, the plaintiff's response by midnight tonight, and we
12 will talk about it more at 8:15 before the jury comes in at
13 9:00.

14 Mr. Dovel, I would really like to leave soon, but if
15 there are a few questions you must ask of this witness, you are
16 welcome to do so.

17 MR. DOVEL: I will do it very brief.

18 THE COURT: But don't speak quickly.

19 CROSS-EXAMINATION

20 BY MR. DOVEL:

21 Q Mr. Davis, were each of these summaries based on/prepared
22 from the same master list of phone calls that you compiled from
23 the defendant's records?

24 A That's correct.

25 Q So when you said there was a different database, you were

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1 referring to your process of doing the calculation, but the
2 underlying data was exactly the same for each of them?

3 A That's correct.

4 Q Was that the data that was received from the defendants in
5 that master list that you prepared and was provided to the
6 defendants back in January?

7 A I'm not sure what they received, but I'm assuming so, yes.

8 Q And that's true for all of 36, 36A, B, and C, right?

9 A Yeah. They are all based off of the original spreadsheets
10 from the contact list.

11 Q Now, with respect to cell phones, what's your
12 understanding about the relationship between a cell phone today
13 and what it was two years ago? You said they could be the
14 same. But are they generally -- if something is part of a cell
15 phone block, was it a cell phone block over the past few years
16 as well?

17 MR. FOSTER: Objection. Foundation.

18 THE COURT: Overruled.

19 THE WITNESS: Generally if it is a cell phone, it
20 will continue to be a cell phone. You can do porting with a
21 number. It seems rare that someone would port a cell phone
22 number to a landline.

23 THE COURT: And what do you base that knowledge on?

24 THE WITNESS: Just based off of looking at porting
25 histories in other cases.

1 MR. DOVEL: No further questions, Your Honor.

2 THE COURT: All right. Any follow-up that you need
3 to do, Mr. Foster?

4 MR. FOSTER: No, Your Honor.

5 THE COURT: All right. Thank you, Mr. Davis.

6 All right. I look forward to reading your written
7 materials early tomorrow morning. I will see you at 8:15. We
8 will bring the jury in at 9:00, and we will do opening
9 statements at 9:00.

10 MR. O'NEAL: A quick question: Could I have counsel
11 let me know who they are calling tomorrow? Then also, I don't
12 think we have their revised deposition designations.

13 MR. DOVEL: Yes. We will get those to you this
14 afternoon. Our first witness will be Lance Eves?

15 MR. O'NEAL: Yes.

16 MR. DOVEL: And the second witness will give you
17 Ms. Wakefield. We will give you the complete list tonight.
18 Those will be the first two.

19 THE COURT: All right. Thank you. We will be in
20 recess until 8:15 tomorrow morning.

21 (Recess.)
22
23
24
25

--oOo--

I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/ Dennis W. Apodaca
DENNIS W. APODACA, RDR, RMR, FCRR, CRR
Official Court Reporter

May 15, 2019
DATE

BY MR. DOVEL: [1] 130/19
 BY MR. FOSTER: [4] 115/20 116/3 120/1 124/16
 JUROR: [151]
 JURY PANEL: [1] 65/11
 MR. ADAMS: [1] 4/10
 MR. DOVEL: [75] 4/16 5/4 5/10 5/18 5/21 6/9 6/21 7/1 7/6 13/2
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 MR. FRANZINI: [2] 4/8 6/2
 MR. JACOBSON: [5] 4/14 85/2 86/18 86/25 87/12
 MR. O'NEAL: [42] 4/20 5/3 14/17 14/24 63/21 64/7 64/10 64/14
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 114/17 132/9 132/14
 MR. PYLE: [1] 4/24
 MS. HOUGH: [1] 4/12
 THE CLERK: [8] 4/3 10/9 18/22 18/25 88/3 89/13 89/19 90/2
 THE COURT: [215]
 THE WITNESS: [16] 115/17 121/25 125/6 125/16 125/18 126/4
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1006 [4] 127/25 128/14 129/6 129/17

101 [1] 2/14

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